Littler | Employer Library

STATE

Littler on

Missouri Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Missouri employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

DISCLAIMER

This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

ACKNOWLEDGEMENTS

Erin M. Reid-Eriksen, Susie Papreck Wine, and Deanne Meyer would like to gratefully acknowledge the contributions of the attorneys who make this publication possible:

- Geetika Antani;
- Vincent Bates;
- Sebastian Chilco;
- Brittney Gibson;
- Maureen H. Lavery;
- Christine McDaniel Novak;
- Lilanthi Ravishankar;
- Rachel Simek;
- Mike Skidgel;
- Hannah Stilley; and
- Christine Sellers Sullivan.

Additional research and editing assistance was also rendered by Barb Olson.

TABLE OF CONTENTS

1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Missouri, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

The Missouri Department of Labor and Industrial Relations (MDLIR) has entered into a partnership with the U.S. Department of Labor (DOL), Wage and Hour Division to work cooperatively through information sharing, joint enforcement efforts, and coordinated outreach and education efforts in order to reduce instances of misclassification of employees as independent contractors.[5]

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	MDLIR, Commission on Human Rights	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context.[6]

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] More information about the DOL Misclassification Initiative is available at https://www.dol.gov/whd/workers/misclassification/#stateDetails. The Memorandum of Understanding (MOU) with the MDLIR is available at https://www.dol.gov/whd/workers/MOU/mo.pdf, and Amendment No. 1 to the MOU at https://www.dol.gov/whd/workers/MOU/mo_1.pdf.

[6] Although it did not set forth a test for determining whether an individual is an employee or an independent contractor under the Missouri Human Rights Act, the Missouri Supreme Court noted that independent contractors are usually hired to complete a specified task, use their own tools, are "paid a fixed sum on a by-the-job basis," and do not receive benefits, and as such, "[t]his Court has generally described an independent contractor as one who contracts to perform work according to his own methods without being subject to the control of his employer except as to the result of his work." *Howard v. City of Kan. City*, 332 S.W.3d 772, 781-82 (Mo. 2011) (quotation omitted). Additionally, the *Howard* court relied upon dictionary definitions of *employee* and *employ*:

> Under traditional rules of statutory construction, undefined words are given their plain and ordinary meaning as found in the dictionary to ascertain the intent of lawmakers. The word "employee" is

Table 1. State Tests for Classifying Workers		
Income Taxes	Missouri Department of Revenue	Internal Revenue Service (IRS) 20-factor test.[7]
Unemployment Insurance	MDLIR, Division of Employment Security	IRS 20-factor test.[8]
Wage & Hour Laws	MDLIR, Division of Labor Standards, Wage & Hour Section	Common law, applying an "economic realities" test, considering the following factors: 1. who has the power to hire and fire the worker; 2. who supervises and controls the worker's schedule and working conditions; 3. how the worker is paid and at what rate; 4. who maintains work records; and 5. whose premises and equipment are used in performing the work.[9]

commonly defined as one employed by another, usually in a position below the executive level and usually for wages, as well as any worker who is under wages or salary to an employer and who is not excluded by agreement from consideration as such a worker. To *employ* means to provide with a job that pays wages or a salary or with a means of earning a living.

332 S.W.3d at 780 (quotation and citations omitted); *see also State ex rel. Sir v. Gateway Taxi Mgmt. Co.*, 400 S.W.3d 478, 486 (Mo. Ct. App. 2013) ("As the last controlling opinion of the Missouri Supreme Court, the *Howard* approach prevails . . . in analyzing whether a worker is an employee under the MHRA [Missouri Human Rights Act].").

[7] MO. CODE REGS. ANN. tit. 12, § 10-2.015(6) (stating that the "term employee for Missouri withholding purposes has the same meaning as it has for federal withholding. . . . This definition is the same for Missouri residents and nonresidents.").

[8] Missouri Dep't of Labor & Indus. Relations, Div. of Emp't Sec., *Off the Books? Worker Misclassification*, *available at* https://labor.mo.gov/offthebooks (citing the IRS 20-factor test); *Higgins v. Missouri Div. of Emp't Sec.*, 167 S.W.3d 275, 283 (Mo. Ct. App. 2005) ("Missouri courts have consistently considered twenty common law factors identified in IRS Revenue Ruling 87-41 to aid in determining the nature of the employment issue."); *see also Timster's World Found. v. Division of Emp't Sec.*, 495 S.W.3d 211, 219 (Mo. Ct. App. 2016) ("The degree of importance of each factor [in the IRS 20-factor test] varies depending on the occupation and the factual context in which the services are performed.") (quotation omitted). Consistent with this interpretation, the Division of Employment Security applies "the case law, Internal Revenue Service regulations and Internal Revenue Service letter rulings interpreting and applying" the relevant Missouri statute. MO. CODE REGS. ANN. tit. 8, § 10-4.150. That statute, however, incorporates and relies on the "common law of agency right to control test." MO. ANN. STAT. § 288.034. While proceedings conducted outside of the Missouri Division of Employment Security do not have a binding effect on the division, Missouri courts also have considered the right to control test in addition to the IRS test. *See* MO. REV. STAT. § 288.215; *Higgins*, 167 S.W.3d at 283-84 ("The 'bedrock' of determining the employment relationship remains the common law agency test of the right to control the manner and means of performance.") (citations omitted)).

[9] *Conrad v. Waffle House, Inc.*, 351 S.W.3d 813, 820 (Mo. Ct. App. 2011) (involving a determination of employment status under the Missouri Minimum Wage Law); *see also Fields v. Advanced Health Care Mgmt. Servs., L.L.C*, 340

Table 1. State Tests for Classifying Workers		
		In applying the test, no one factor is dispositive.[10] A Missouri federal court, however, has applied a right to control test considering the following factors: "(1) the extent of control, (2) the actual exercise of control, (3) the duration of the employment, (4) the right to discharge, (5) the method of payment, (6) the degree to which the alleged employer furnished equipment, (7) the extent to which the work is the regular business of the employer, and (8) the employment contract."[11]
Workers' Compensation	MDLIR, Division of Workers' Compensation	Common-law test. "[A]n independent contractor has been judicially defined as one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer, except as to the result of his work."[12] Per Missouri courts, the central question in determining if an employer-employee relationship existed is whether the hiring party had the right to control the means and manner by which the service was performed. Factors relevant to this inquiry include:

S.W.3d 648, 654-55 (Mo. Ct. App. 2011). Note that Missouri courts generally looks to the federal Fair Labor Standards Act when enforcing Missouri's minimum wage and overtime provisions. *See* MO. CODE REGS. ANN. tit. 8, § 30-4.010.

[10] *Conrad*, 351 S.W.3d at 820.

[11] *Wells v. FedEx Ground Package Sys., Inc.*, 979 F. Supp. 2d 1006, 1014 (E.D. Mo. 2013) (citations omitted), *rev'd on other grounds Gray v. FedEx Ground Package Sys., Inc.*, 799 F.3d 995 (8th Cir. 2015) (applying the eight-factor right to control test).

[12] *Seaton v. Cabool Lease, Inc.*, 7 S.W.3d 501, 505 (Mo. Ct. App. 1999) (quotation omitted), *overruled in part on other grounds by Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003); *see also Chouteau v. Netco Constr.*, 132 S.W.3d 328, 332 (Mo. Ct. App. 2004) (right to control the means and manner of services is key in determining if an employment relationship exists).

Table 1. State Tests for Classifying Workers		
		"(1) the extent of control, (2) the actual exercise of control, (3) the duration of the employment, (4) the right to discharge, (5) the method of payment, (6) the degree to which the alleged employer furnished equipment, (7) the extent to which the work is the regular business of the alleged employer, and (8) the employment contract."[13] Where the application of the control test is not conclusive, Missouri courts have applied a "relative nature of the work test" considering "the character of the claimant's work or business—how skilled it is, how much of a separate calling or enterprise it is, to what extent it may be expected to carry its own accident burden and so on—and its relation to the employer's business, that is, how much it is continuous or intermittent, and whether the duration is sufficient to amount to the hiring of continuing services as distinguished from contracting for the completion of a particular job."[14]
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status in this context. Missouri does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The

[13] *Seaton*, 7 S.W.3d 501 at 505 (citations omitted); *see also Burgess v. NaCom Cable Co.*, 923 S.W.2d 450, 452 (Mo. Ct. App. 1996).

[14] *Burgess*, 923 S.W.2d at 453 (quotation omitted).

employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[15]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[16] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[17]

For more information on these topics, see **LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS**.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Employers are prohibited from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work in Missouri.[18] However, Missouri does not have a generally applicable employment verification statute requiring private employers to use E-Verify or another electronic verification system. Therefore, private employers in Missouri should follow federal law requirements regarding employment eligibility verification.

1.2(b)(ii) *State Contractors*

Employers that: (1) contract with or have a grant in excess of $5,000 from the state of Missouri or a political subdivision; or (2) receive a state-administered or subsidized tax credit, tax abatement, or loan

---

[15] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

[16] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[17] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

[18] MO. REV. STAT. § 285.530.

from Missouri, must verify the employment eligibility of every new hire working in connection with the contracted services using E-Verify, and must affirm and document the use of E-Verify.[19] Further, these employers must sign an affidavit for all new hires certifying that they do not knowingly employ any person who is an unauthorized worker in connection with the contracted services.[20] Any employer contracting with the state or any political subdivision of the state is required to provide the required affidavits to the state, and any political subdivision of the state with which it contracts, on an annual basis.[21]

All Missouri state contracts must include a provision that allows the state to declare a breach and cancel the contract immediately, without penalty, if it has reasonable cause to believe that the contractor has knowingly employed individuals who are not eligible to work in the United States, in violation of federal law.[22] Likewise, all Missouri state agencies must require every contractor who does business with the state to certify in writing that any employee of the contractor assigned to perform services under the contract is eligible to work in the United States.[23]

1.2(b)(iii) *State Enforcement, Remedies & Penalties*

Private Employers. For a first violation, the court may temporarily suspend the business licenses, permits, and exemptions of any employer that knowingly violates the provisions regarding the employment of illegal aliens for 14 days and until the violation is corrected. For a second violation, the court may temporarily suspend the business licenses, permits, and exemptions for one year. For violations after the second, the court will direct that any applicable business licenses, permits, and exemptions be forever suspended.[24]

Ineligibility for State Economic Incentives. Additionally, an employer that employs illegal aliens will be ineligible for any state-administered or subsidized tax credit, tax abatement, or loan from the state. A tax credit recipient who knowingly employs unauthorized aliens must forfeit any tax credits and repay the amount of any tax credits redeemed during the period when that unauthorized alien was employed. The forfeiture and repayment is in addition to any penalties imposed by statute.[25]

State Contractors. In addition to the penalties discussed above, if, upon reasonable evidence, a state agency determines that a contractor or subcontractor, or *any* employer receiving a grant, tax-credit, tax abatement, or loan from the state, hired one or more unauthorized aliens, it will order the contractor or recipient to discharge any unauthorized worker. Upon the first violation, the business entity will be deemed in breach of contract and the state may terminate the contract and suspend or debar the business entity from doing business with the state for a period of three years. Upon such termination, the state may withhold up to 25% of the total amount due to the business entity. Upon a second or subsequent violation, the business entity will be deemed in breach of contract and the state may terminate the contract and permanently suspend or debar the business entity from doing business with the state. Upon such termination, the state may withhold up to 25% of the total amount due to the business entity.

---

[19] MO. REV. STAT. §§ 285.525, 285.530.

[20] MO. REV. STAT. § 285.530.

[21] MO. REV. STAT. § 285.530.

[22] Exec. Order No. 07-13 (Mar. 6, 2007).

[23] Exec. Order No. 07-13 (Mar. 6, 2007).

[24] MO. REV. STAT. § 285.535.

[25] MO. REV. STAT. §§ 135.815 as amended by H.B. 2400 (Mo. 2022), 285.025.

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[26] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.3(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Missouri places no statutory restrictions on a private employer's use of arrest records. While there is no state "ban-the box" law covering private employers, Columbia, Missouri has a local "ban-the-box" ordinance.[27]

1.3(a)(iii) *Local Guidelines on Employer's Use of Arrest Records*

City of Columbia "Ban-the-Box" Ordinance. Employers doing business in the City of Columbia are prohibited from inquiring, questioning, or otherwise seeking information as to whether an individual has ever been arrested for, charged with, or convicted of any crime both: on an employment application and,

---

[26] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[27] COLUMBIA, MO., CODE OF ORDINANCES §§ 12-90 *et seq.*; *see also* City of Columbia, Mo., Law & Prosecutor's Office, *"Ban the Box" Frequently Asked Questions*, *available at* http://www.como.gov/law/human-rights/ban-the-box/ban-the-box-faq/.

at any time before the employer has extended a conditional offer of employment to the applicant.[28] However, Columbia employers are not prohibited from notifying an applicant in writing of the specific offenses that will disqualify him/her from employment in a particular job position.[29]

Employers are "encouraged" not to automatically ban job seekers with a criminal history. Employers may make final employment-related decisions based on all of the information available to them, including consideration of the frequency, recentness, and severity of a criminal record as well as rehabilitation efforts balanced against the duties and responsibilities of the position.[30]

The City of Columbia's prohibitions on criminal history inquiries do not apply for certain positions where:

- the employer is required to exclude applicants with certain criminal convictions from employment pursuant to local, state, or federal law or regulation;
- a standard fidelity bond or equivalent bond is required, and certain criminal convictions would disqualify the applicant from obtaining a bond, in which case an employer may inquire whether an applicant has been convicted of any of the specified offenses; or
- the individual must be licensed under the Emergency Medical Services Systems Act.[31]

Kansas City "Ban-the-Box" Ordinance. Kansas City employers of six or more employees are prohibited from inquiring about an applicant's criminal history until after it has been determined that the individual is otherwise qualified for the position, and only after the applicant has been interviewed for the position.[32] *Criminal history* means a record of a conviction, or a plea of guilty or no contest, to a violation of a federal or state criminal statute or municipal ordinance; records of arrests not followed by a valid conviction; convictions which have been annulled or expunged; pleas of guilty without conviction; convictions for which a person received a suspended impositions of sentence; and misdemeanor convictions where no jail sentence can be imposed.[33]

The ordinance also provides that an employer cannot base a hiring or promotional decision on an applicant's criminal history or related sentence, unless the employer can demonstrate that the employment–related decision was based on all information available including consideration of the frequency, recentness and severity of a criminal record and that the record was reasonably related to the duties and responsibilities of the position.[34]

City of St. Louis "Ban-the-Box" Ordinance. Employers of 10 or more employees are prohibited from basing a hiring or promotion decision on an individual's criminal history, unless the employer can demonstrate that:

- the decision is employment-related and is based on all information available, including the frequency, recentness, and severity of the criminal history, and

[28] COLUMBIA, MO., CODE OF ORDINANCES § 12-90(a).

[29] COLUMBIA, MO., CODE OF ORDINANCES § 12-90(c).

[30] COLUMBIA, MO., CODE OF ORDINANCES § 12-90(d).

[31] COLUMBIA, MO., CODE OF ORDINANCES § 12-90(b).

[32] KANSAS CITY, MO. CODE OF ORDINANCES §§ 38-1(a)(13), 38-104(a)(2).

[33] KANSAS CITY, MO. CODE OF ORDINANCES § 38-1(a)(31).

[34] KANSAS CITY, MO. CODE OF ORDINANCES § 38-104(a)(1).

- the criminal history is reasonably related to or bears upon the duties and responsibilities of the job position.[35]

Employers in St. Louis may not inquire about or seek information about a job applicant's criminal history until after it has been determined that the applicant is otherwise qualified for the job position and only after the applicant has been interviewed for the position. The prohibition does not apply to job positions where federal or state laws or regulations or other city ordinances prohibit employers from employing individuals with certain criminal histories.[36]

In addition, employers may not publish a job advertisement excluding applicants on the basis of criminal history nor may an employer include statements excluding applicants on the basis of criminal history and job application forms and other employer-generated forms used in the hiring process.[37]

1.3(a)(iv) *State Guidelines on Employer's Use of Conviction Records*

Missouri places no statutory restrictions on a private, unregulated employer's use of conviction records. However, certain *regulated* employers (*i.e.*, activities requiring a license) are statutorily prohibited from making an adverse employment decision based solely on the fact that an individual was found guilty or convicted of a crime, unless the record on which the employer relies to make the decision is either job-related or reasonably related to the applicant's or employee's ability to do the job.[38]

1.3(a)(v) *Local Guidelines on Employer's Use of Conviction Records*

The City of St. Louis', Kansas City's and the City of Columbia's "ban-the-box" laws cover both arrest and conviction records. For a discussion of that ordinance, see **1.3(a)(ii)**.

1.3(a)(vi) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

Under Missouri law, unless otherwise provided, a person whose arrest records have been closed is not guilty of perjury or giving a false statement by reason of their failure to recite or acknowledge such arrest or trial in response to any inquiry.[39]

Moreover, a person may petition to have criminal records of certain enumerated offenses expunged. If granted, the individual may not be held guilty of perjury or otherwise giving a false statement because of the individual's failure to recite or acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry made of the individual, and no such inquiry shall be made for information relating to an expungement.[40] Thus, employers cannot ask about these expunged records.

---

[35] ST. LOUIS, MO., CODE OF ORDINANCES § 8.120.010.

[36] ST. LOUIS, MO., CODE OF ORDINANCES § 8.120.010.

[37] ST. LOUIS, MO., CODE OF ORDINANCES § 8.120.010.

[38] MO. REV. STAT. § 561.016(1) (finding of guilt or conviction not grounds for legal disqualification or disability, except under limited circumstances). General application of the statute to private employment is misplaced, as the statute only applies to "regulated areas" that includes activities requiring a license for participation. *Chandler v. Allen*, 108 S.W.3d 756, 762-63 (Mo. Ct. App. 2003) (employee of deli in state office building had no claim under Missouri Revised Statutes section 516.016 against government officials who procured the termination of his employment because his discharge from the deli, a nonregulated business, did not involve a legal disqualification or disability).

[39] MO. REV. STAT. § 610.110.

[40] MO. REV. STAT. § 610.140.

Finally, a person may deny the existence of certain intoxication-related traffic and boating that have been expunged by a court after 10 years of good behavior.[41]

1.3(a)(vii) *Local Enforcement, Remedies & Penalties*

City of Columbia "Ban-the Box" Ordinance. Columbia's Human Rights Commission enforces this law, and an employer that violates the provisions is guilty of a misdemeanor, punishable by fines, imprisonment, or both. The "ban-the-box" law does not create a private right of action, however.[42]

Kansas City "Ban-the-Box" Ordinance. An individual alleging a violation of Kansas City's ban-the-box ordinance may file an administrative complaint with the Kansas City Human Rights Commission within 180 days after the alleged unlawful discriminatory practice was committed.[43] An employer found to have violated the ban-the-box provisions or another provision of the city's civil rights ordinance may be subject to a 30-day revocation of its license to do business in the city.[44]

City of St. Louis "Ban-the-Box" Ordinance. An individual alleging a violation of the ordinance may file a complaint with the St. Louis Civil Rights Enforcement Agency. An employer found to be in violation may incur civil penalties and business operating license revocation.[45]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[46] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[47] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification

---

[41] MO. REV. STAT. § 610.130.

[42] COLUMBIA, MO., CODE OF ORDINANCES §§ 12-91 to 12-94.

[43] KANSAS CITY, MO. CODE OF ORDINANCES § 38-23(a).

[44] KANSAS CITY, MO. CODE OF ORDINANCES § 38-35.

[45] ST. LOUIS, MO., CODE OF ORDINANCES §§ 8.120.020, 8.120.030.

[46] 15 U.S.C. §§ 1681 *et seq*.

[47] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

requirements. For additional information on the FCRA, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[48]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Missouri does not have a mini-FCRA law, and there are no additional state provisions specifically restricting a private employer's use of credit information and history.

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

Missouri law contains no express provisions regulating employer access to applicants' or employees' social media accounts.

---

[48] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[49] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Missouri law contains no express provisions regulating polygraph examinations for applicants or employees.

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[50] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not

[49] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

[50] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[51] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Under Missouri's unemployment law, an employer may require applicants to undergo preemployment testing for drugs or alcohol as a condition of employment, and may use the results for unemployment-related purposes, but only if the applicant was informed of the testing requirement prior to taking the test.[52]

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State and Local Restrictions on Salary History Inquiries*

Missouri does not restrict an employer's ability to inquire into a job applicant's salary or wage history. However, the city of Kansas City prohibits employers of six or more employees:

- inquiring about an applicant's salary history;
- screening applicants based on their current or prior wages, benefits, or other compensation, or salary histories, including requiring that an applicant's prior wages, benefits, other compensation or salary history satisfy minimum or maximum criteria;
- rely on an applicant's salary history in deciding whether to offer employment to an applicant, or in determining the salary, benefits, or other compensation for such applicant during the hiring process, including the negotiation of an employment contract; or
- refusing to hire or otherwise disfavoring, injuring, or retaliating against an applicant for not disclosing their salary history to an employer.[53]

Salary history means an applicant's current or prior wages, benefits, or other compensation, and does not include any objective measure of the applicant's productivity, such as revenue, sales, or other production reports.[54]

An employer or its agent may, without inquiring about salary history, engage in discussion with the applicant about expectations with respect to salary, benefits, and other compensation, including but not limited to unvested equity or deferred compensation that the applicant would forfeit or have cancelled by virtue of the applicant's resignation from their current employer.[55]

---

[51] 41 U.S.C. §§ 8101 *et seq*.; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[52] MO. REV. STAT. § 288.045.

[53] KANSAS CITY CODE OF ORDINANCES §§ 38-1(a)(16), 38-102(a).

[54] KANSAS CITY CODE OF ORDINANCES § 38-1(a)(31).

[55] KANSAS CITY CODE OF ORDINANCES § 38-102(b).

The prohibition on salary history inquiries does not apply in the following circumstances:

- employees applying for internal transfer or promotion with their current employer;
- an applicant's voluntary and unprompted disclosure of salary history information;
- any attempt by an employer to verify an applicant's disclosure of nonsalary-related information or conduct a background check, provided that if the verification or background check discloses the applicant's salary history, the employer cannot rely on the disclosure for purposes of determining the applicant's salary, benefits, or other compensation during the hiring process, including the negotiation of a contract;
- employee positions for which salary, benefits, or other compensation are determined pursuant to procedures established by collective bargaining; and
- applicants who are re-hired by the employer within five years of the applicant's most recent date of termination from employment by the employer, provided that the employer already has past salary history data regarding the applicant from the previous employment.[56]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire

Category	Notes
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[57] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[58] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that

[56] KANSAS CITY CODE OF ORDINANCES § 38-102(c).

[57] 26 U.S.C. § 36B.

[58] 42 U.S.C. § 18071.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	all or a portion of such contribution may be excludable from income for federal income tax purposes.[59] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[60]
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[61] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[62]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[63] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[64]

[59] 29 U.S.C. § 218b.

[60] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[61] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[62] 29 C.F.R. § 2590.606-1.

[63] 29 C.F.R. § 825.300(a).

[64] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[65]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[66] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[67]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[68]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip

[65] 29 C.F.R. § 825.300(a).

[66] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[67] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[68] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[69]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	Each person hired by an employer with 20 or more employees must receive a notice, to be prepared or approved by the Director of the Department of Labor and Industrial Relations ("Director"), summarizing the requirements of the state's Leave for Domestic and Sexual Violence law. The notice may be provided in electronic form. Under the law, employers with at least 20 but not more than 49 Missouri employees must provide one workweek of leave during any 12-month period. Employers with 50 or more employees must provide two workweeks of leave during any 12-month period. A *workweek* means an individual employee's standard workweek. Additionally, the new law does not create a right to take unpaid leave that exceeds the amount of unpaid leave time allowed under the federal Family and Medical Leave Act of 1993. An employee may take leave intermittently or on a reduced work schedule. Leave must be used for the purpose of addressing an incident of domestic or sexual violence, including by: • seeking medical attention for or recovering from physical or psychological injuries inflicted by domestic or sexual violence; • obtaining services from a victim services organization; • obtaining psychological or other counseling; • participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the victim's safety from future domestic or sexual violence, or to ensure economic security; or • seeking legal assistance or remedies, including preparing or participating in any civil or criminal legal proceeding related to the domestic or sexual violence. Employees must provide the employer with at least 48 hours of advance notice of the employee's intention to take leave, unless

[69] 29 C.F.R. § 531.59.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	providing such notice would not be practicable. When an unscheduled absence occurs, an employer may not take any action against the employee if the employee provides certification upon the employer's request, as discussed below. The new law does not prohibit an employer from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work. Taking leave must not result in the loss of any employment benefit accrued prior to the date on which the leave commenced. During any period that an employee takes leave, the employer must maintain coverage for the employee and any family or household member under any group health plan for the duration of the leave at the level and the conditions coverage that would have been provided if employee had continued employment continuously for the duration of the leave. Employers may recover health insurance premiums from the employee if the employer paid for maintaining coverage under the group health plan during any period of leave if the employee fails to return from leave after the period of leave has expired for a reason other than the continuation, recurrence, or onset of domestic violence or sexual violence that entitled the employee to leave, or other circumstances beyond the employee's control. An employee returning from leave is entitled to be restored to the position of employment the employee held when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. In addition to the leave provisions, covered employers must timely provide reasonable safety accommodations for employees for the known limitations resulting from the circumstances relating to an employee or an employee's family or household member experiencing domestic or sexual violence.[70]
Fair Employment Practices Documents	No notice requirement located.
Tax Documents	All employers maintaining an office in the state or transacting business in the state must withhold wages from payroll. Employers must register with the state Department of Revenue, which may be completed on the

[70] MO. REV. STAT. ANN. §285.665. The notice can be found at: https://labor.mo.gov/media/pdf/ls-112-ai.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
	department's website. Employees must complete a withholding exemption certificate.[71]
Unemployment Insurance	For individuals performing work, "who may not reasonably be expected to see posted notices," employers must notify each such worker in writing of the substance of the unemployment notice.[72]
Wage & Hour Documents	No notice requirement located.

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[73] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[74]

---

[71] MO. REV. STAT. § 143.191; MO. CODE REGS. ANN. tit. 12, § 10-2.015. Withholding forms (including MO-W-4) and other materials are available at http://dor.mo.gov/forms/index.php?category=23.

[72] MO. CODE REGS. ANN. tit 8, § 10-3.070; *see also* MO. REV. STAT. § 288.130. The unemployment notice is available in English at https://labor.mo.gov/sites/labor/files/pubs_forms/MODES-B-2-AI.pdf and in Spanish at https://labor.mo.gov/sites/labor/files/pubs_forms/MODES-B-2-S-AI.pdf.

[73] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[74] 42 U.S.C. § 653a.

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information

Contact By Mail or Fax	Contact Online
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509	Register online by submitting a multistate employer notification form over the internet.[75] Multistate employers can receive assistance with registration as a multistate employer from the

[75] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

Table 4. Multistate Employer New Hire Information	
Contact By Mail or Fax	**Contact Online**
Randallstown, MD 21133 Fax: (410) 277-9325	Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Missouri's new hire reporting law.

Who Must Be Reported. Employers must report all newly-hired employees.[76]

Report Timeframe. Employers must report within 20 days after hiring date. If employers report electronically or magnetically they may report twice per month, not less than 12 nor more than 16 days apart.[77]

Information Required. Employers are required to report the employee's name, address, Social Security number, and the date the employee signed their federal Form W-4, as well as the employer's name, address, and federal tax identification number.[78]

Form & Submission of Report. An employer must submit the employee's Form W-4 or an equivalent form. The report may be submitted by mail, fax, magnetically, or electronically.[79]

Location to Send Information.

Missouri Department of Revenue
P.O. Box 3340
Jefferson City, MO 65105
(800) 585-9234
(573) 526-8079 (fax)
https://www.missouriemployer.dss.mo.gov/

Multistate Employers. Any employer that has employees who are employed in two or more states and transmits reports magnetically or electronically may comply with the statute by designating the state that the employer will transmit the report to and notify the secretary of HHS of that designation.[80]

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting

[76] MO. REV. STAT. § 285.300(1).

[77] MO. REV. STAT. § 285.300(1).

[78] MO. REV. STAT. § 285.300(1).

[79] MO. REV. STAT. §§ 285.300(1), 285.304.

[80] MO. REV. STAT. § 285.300(2).

the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[81] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see **LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS**.

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Employees in Missouri are generally not precluded from competing with a former employer absent a contractual restriction. Competition can include working for a direct competitor, soliciting customers, recruiting employees, or disclosing confidential information learned in their previous employment. Covenants restricting these activities are enforceable in Missouri under certain circumstances. These covenants can take the form of agreements not to compete, nondisclosure or confidentiality agreements, and agreements limiting the ability to solicit either customers or employees.

In 2001, Missouri enacted a law governing the enforceability of restrictive covenants.[82] The Missouri statute explains that a reasonable covenant in writing that promises not to solicit, recruit, hire, or otherwise interfere with the employment of one or more employees is enforceable and not a restraint on trade in the following limited instances:

- between two corporations engaged in a joint venture;
- to protect a confidential trade secret;
- to protect customer or supplier relationships, goodwill, or loyalty; or

[81] 18 U.S.C. §§ 1832 *et seq.*

[82] MO. REV. STAT. § 431.202.

- between an employer and one or more employees, so long as the covenant does not continue for more than one year following employment.[83]

Restrictive covenants are unenforceable for those employees who only provide secretarial or clerical services.[84] Post-employment covenants are presumed reasonable if the duration is no more than a year.[85]

In addition to the statute, there is substantial case law regarding the enforceability of restrictive covenants. The Missouri Supreme Court has recognized that there are competing concerns regarding enforcement of restrictive covenants:

> The law of non-compete agreements in Missouri seeks to balance the competing concerns between an employer and employee in the workforce. On one hand, employers have a legitimate interest in engaging a highly trained workforce without the risk of losing customers and business secrets after an employee leaves his or her employment. On the other hand, employees have a legitimate interest in having mobility between employers to provide for their families and advance their careers. Furthermore, although the law favors the ability of parties to contract freely, contracts in restraint of trade are unlawful.[86]

In recognition of these concerns, restrictive covenants are enforceable in Missouri under certain limited circumstances. As an initial matter, the covenant must be supported by adequate consideration. If it is, then Missouri courts will enforce the covenant if it is "demonstratively reasonable."[87]

The Missouri Supreme Court has explained that a covenant is reasonable if, "it is no more restrictive than is necessary to protect the legitimate interests of the employer."[88] Noncompete agreements are enforceable to the extent they are "narrowly tailored temporally and geographically . . . and only to the extent that the restrictions protect the employer's trade secrets or customer contacts."[89]

In determining whether a restrictive covenant is reasonable, Missouri courts consider the circumstances surrounding the restriction include:

- the restriction's subject matter;
- the purpose the restriction serves;
- the situation of the parties;
- the specialization of the business involved;
- the consideration supporting the restriction;
- the threatened danger to the employer without the restriction; and

---

[83] MO. REV. STAT. § 431.202(1).

[84] MO. REV. STAT. § 431.202(1)(4).

[85] MO. REV. STAT. § 431.202(4).

[86] *Whelan Sec. Co. v. Kennebrew*, 379 S.W.3d 835, 841 (Mo. 2012) (citing *Healthcare Servs. of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 610 (Mo. 2006)).

[87] *Whelan Sec. Co.*, 379 S.W.3d at 841.

[88] 379 S.W.3d at 841 (citing *Healthcare Servs. of the Ozarks, Inc.*, 198 S.W.3d at 610).

[89] *Whelan Sec. Co.*, 379 S.W.3d at 841-42.

- the economic hardship imposed on the employee.[90]

Restrictive covenants that seek to protect an employer from "mere competition" by a former employee are not reasonable and not enforceable under Missouri law.[91] Instead, the covenants are only enforceable to protect the legitimate interests of the employer.[92]

Notably, nonsolicitation clauses are only valid to protect "the influence an employee acquires over his employer's customers through personal contact."[93] A nonsolicitation provision that prohibits solicitation of any "potential" customer "regardless of how tenuous the relationship" was between existing or prospective customers of the plaintiff and the defendants, is overbroad.[94]

Enforceability Following Employee Discharge. Missouri courts have determined that noncompete agreements remain enforceable following employee discharge, so long as the employer did not breach the employment contract.[95]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

In Missouri, signing a restrictive covenant at the beginning of the employment relationship has been found to constitute adequate consideration.[96] Salary increases and promotions have also been found to constitute adequate consideration.[97] In addition, continued employment will constitute sufficient consideration to support the restrictive covenant.[98]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include

---

[90] *Sturgis Equip. Co. v. Falcon Indus. Sales Co.*, 930 S.W.2d 14, 17 (Mo. Ct. App. 1999).

[91] *Whelan Sec. Co.*, 379 S.W.3d at 842; *Healthcare Servs. of the Ozarks, Inc.*, 198 S.W.3d at 610.

[92] *Healthcare Servs. of the Ozarks, Inc. v. Copeland*, 198 S.W.3d 604, 610 (Mo. 2006).

[93] *Whelan Sec. Co. v. Kennebrew*, 379 S.W.3d 835, 843-44 (Mo. 2012).

[94] 379 S.W.3d at 844.

[95] *Forms Mfg. v. Edwards*, 705 S.W.2d 67 (Mo. Ct. App. 1985).

[96] *See Nail Boutique, Inc. v. Church*, 758 S.W.2d 206 (Mo. Ct. App. 1988).

[97] *See Computer Sales Int'l v. Collins*, 723 S.W.2d 450, 452 (Mo. Ct. App. 1986).

[98] *Jumbosack Corp. v. Buyck*, 407 S.W.3d 51, 56-57 (Mo. Ct. App. 2013) ("continued at-will employment constitutes consideration for a non-compete agreement where the employer allows the employee 'by virtue of the employment[,] to have continued access to [its] protectable assets and relationships.'").

introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

In Missouri, courts can rewrite, or blue pencil, the length or breadth of a restrictive covenant to make it reasonable.[99] However, Missouri courts do not always blue pencil a restriction the court finds unenforceable.[100] In drafting restrictive covenants, employers should be careful in delineating a reasonable scope. In litigation over restrictive covenants, counsel should specifically request the court to blue pencil the restrictive covenant if it is found to be overbroad.

2.3(b)(iv) *State Trade Secret Law*

In 1995, Missouri adopted the Uniform Trade Secrets Act.[101] The Missouri Uniform Trade Secrets Act ("Missouri UTSA") preempts "conflicting tort, restitutionary, and other laws of this state providing civil remedies for misappropriation of a trade secret."[102]

Definition of a Trade Secret. The Missouri UTSA defines *trade secret* as:

> information, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, or process, that:
>
> (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
>
> (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[103]

When weighing whether information is a trade secret, Missouri courts consider:

- the extent to which the information is known outside of the business;
- the extent to which the information is known to employees and others involved in the business;
- the extent of measures taken by the employer to maintain the secrecy of the information;
- the value of the information;
- the amount of effort or money expended to develop the information; and

[99] *See Mid-States Paint & Chem. Co. v. Herr*, 746 S.W.2d 613, 616 (Mo. Ct. App. 1988); *Orchard Container Corp. v. Orchard*, 601 S.W.2d 299, 304 (Mo. Ct. App. 1980) (reducing a geographic restriction from 200 miles to 125 miles).

[100] *See, e.g.*, *Whelan Sec. Co. v. Kennebrew*, 379 S.W.3d 835, 844 n.6 (Mo. 2012).

[101] MO. REV. STAT. §§ 417.450 *et seq*.

[102] MO. REV. STAT. § 417.453.

[103] MO. REV. STAT. § 417.453.

- the ease with which others could develop the information on their own.[104]

Courts have granted trade secret protection to the following types of data and information under Missouri law:

- formula or processes;[105]
- design specifications;[106]
- business information (*i.e.*, marketing plans, financial information, pricing lists, policies);[107]
- customer/client lists or contacts;[108]
- computer programs and data compilations;[109] and
- customer files.[110]

Misappropriation of a Trade Secret. The Missouri UTSA prohibits misappropriation of trade secrets. To prove misappropriation, the plaintiff must establish:

- acquisition of a trade secret of a person by another person who knows or has reason to know that the trade secret was acquired by improper means; or
- disclosure or use of a trade secret of a person without express or implied consent by another person who:
  - used improper means to acquire knowledge of the trade secret;
  - before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake; or
  - at the time of disclosure or use, knew or had reason to know that knowledge of the trade secret was:
    - derived from or through a person who had utilized improper means to acquire it;
    - acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
    - derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.[111]

---

[104] *See Secure Energy, Inc. v. Coal Synthetics L.L.C.*, 2010 WL 1692192, at **926-927 (E.D. Mo. Apr. 27, 2010); *see also Reliant Care Mgmt., Co. v. Health Sys.*, 2011 WL 4369371, at **1-2 (E.D. Mo. Sept. 19, 2011).

[105] *See, e.g.*, *Superior Gearbox Co. v. Edwards*, 869 S.W.2d 239, 249-50 (Mo. Ct. App. 1993) (milling process).

[106] *See, e.g.*, *Synergetics, Inc. v. Hurst*, 477 F.3d 949, 961 (8th Cir. 2007).

[107] *See, e.g.*, *Synergetics*, 477 F.3d at 961 (finding product pricing information, customer-specific product purchases, quantities of products its customers purchased, and prioritization of its products protectable).

[108] *Kessler-Heasley Artificial Limb Co. v. Kenney*, 90 S.W.3d 181, 188-89 (Mo. Ct. App. 2002*). But see Western Forms, Inc. v. Pickell*, 308 F.3d 930, 933-34 (8th Cir. 2002) (customer list and pricing information not protectable).

[109] *Conseco Finance Serv. Corp. v. North American Mortgage Co.*, 381 F.3d 811, 819 (8th Cir. 2004).

[110] 381 F.3d at 819.

[111] MO. REV. STAT. § 417.453(2).

The Missouri UTSA defines *improper means* to include "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means."[112]

A court may enjoin actual or threatened misappropriation of a trade secret.[113] Under the inevitable disclosure doctrine, an employer may legally enjoin an employee who takes or possesses a trade secret, but has not yet used it, by showing that the employee's new job will inevitably lead him/her to rely upon the employer's trade secret. The plaintiff must "demonstrate inevitability exists with facts indicating that the nature of the secrets at issue and the nature of the employee's past and future work justify an inference that the employee cannot help but consider secret information."[114] Missouri employs the head start rule, which holds that, if by misappropriating trade secrets a defendant gets a head start on the amount of time it would normally take to produce and market a competitive product, then the defendant should be enjoined for the amount of time it would have taken to produce and market the competitive product, absent the misappropriation.[115]

The Missouri UTSA provides for recovery of the actual loss caused by misappropriation, as well as recovery for any unjust enrichment created by misappropriation.[116] In addition, the damages caused by misappropriation may be measured by the imposition of liability for a reasonable royalty for the unauthorized disclosure or use of a trade secret.[117]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Missouri does not have a statute of general applicability regarding ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

[112] MO. REV. STAT. § 417.453(1).

[113] MO. REV. STAT. § 417.455.

[114] *H & R Block Eastern Tax Servs. v. Enchura*, 122 F. Supp. 2d 1067, 1076 (W.D. Mo. 2000).

[115] *Synergetics, Inc. v. Hurst*, 477 F.3d 949, 961 (8th Cir. 2007).

[116] MO. REV. STAT. § 417.457.

[117] MO. REV. STAT. § 417.457.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[118]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[119]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[120]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[121]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[122]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[123]

[118] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[119] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[120] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[121] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[122] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[123] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[124]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[125]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[126] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[127]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[128]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by

[124] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[125] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[126] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[127] 41 C.F.R. §§ 60-300.44, 60-741.44.

[128] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	attaching a notice to the contract, or may post the notice at the worksite.[129]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[130]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[131]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[132]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[133]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their

[129] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[130] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[131] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[132] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[133] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[134] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[135]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[136]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[137]

[134] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

[135] 29 C.F.R. § 13.5.

[136] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[137] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements

Poster or Notice	Notes
Child Labor: Youth Employment List	Employers that employ minors under 16 must conspicuously post a list of all such minors employed. The notice provided by the state also summarizes the restrictions on child labor, including hours and occupations.[138]
Fair Employment Practices: Discrimination in Employment	Employers must post conspicuous notice informing employees about the prohibition against discrimination in employment and how to file a complaint.[139]
Fair Employment Practices: Discrimination in Housing	Employers in the business of sales or rentals of housing must post an additional notice at all workplaces concerning fair housing.[140]
Fair Employment Practices: Discrimination in Public Accommodations	Employers operating businesses that are open to the public must post an additional notice at all locations concerning the prohibition against discrimination in public accommodations.[141]
Unemployment Compensation	All employers must post and maintain notice, where readily accessible, concerning employee rights to unemployment benefits and how to apply. For individuals performing work, "who may not reasonably be expected to see posted notices," employers must notify each such

[138] MO. REV. STAT. § 294.060. This notice is available at https://labor.mo.gov/sites/labor/files/pubs_forms/LS-43-AI.pdf.

[139] MO. REV. STAT. § 213.030; MO. CODE REGS. ANN. tit 8, § 60-3.010. This poster is available in English at https://labor.mo.gov/sites/labor/files/pubs_forms/MCHR-9-AI.pdf and in Spanish at https://labor.mo.gov/sites/labor/files/pubs_forms/MCHR-9-S-AI.pdf.

[140] MO. CODE REGS. ANN. tit 8, § 60-3.010. This poster is available in English at https://labor.mo.gov/sites/labor/files/pubs_forms/MCHR-6-AI.pdf and in Spanish at http://labor.mo.gov/sites/labor/files/pubs_forms/MCHR-6-S-AI.pdf.

[141] MO. CODE REGS. ANN. tit 8, § 60-3.010. This poster is available in English at https://labor.mo.gov/sites/labor/files/pubs_forms/MCHR-7-AI.pdf and in Spanish at https://labor.mo.gov/sites/labor/files/pubs_forms/MCHR-7-S-AI.pdf.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	worker individually in writing of the substance of the unemployment notice.[142]
Wages, Hours & Payment: Maximum Hours—Miners	Mining employers must post and maintain an abstract of the laws and rules (such as restrictions on hours and mining safety rules) in conspicuous places at or near mines, where they can be conveniently read by employees.[143]
Wages, Hours & Payment: Minimum Wage Poster	All employers must post in conspicuous and accessible places, at all worksites, notice summarizing the state minimum wage law.[144]
Wages, Hours & Payroll: Wage Payment Notification	Any employer that intends to reduce the wages of any employee must provide 30 days' advance written notice to affected employees, indicating the class of employees subject to the change and the amount of the reduction. Notice may be posted conspicuously at workplaces or can be mailed to each individual.[145]
Workers' Compensation	Employers with five or more employees—and all employers in the construction industry—must post notices at workplaces, in sufficient number to reasonably ensure that all employees will review the information, describing workers' compensation benefits, identifying the employer's carrier, and instructing employees what to do if injured on the job. For individuals performing work, "who may not reasonably be expected to see a posted notice," employers must notify each such worker in writing of the substance of this notice.[146]
Workplace Safety: Smoking Area/No Smoking Signs	Generally speaking, smoking is prohibited in places of work in Missouri.[147] "No Smoking" signs must be posted at all entrances to public places subject to this restriction. An employer may designate

[142] MO. REV. STAT. § 288.130; MO. CODE REGS. ANN. tit 8, § 10-3.070. This poster (Notice to Workers Concerning Unemployment Benefits) is available in English at https://labor.mo.gov/sites/labor/files/pubs_forms/MODES-B-2-AI.pdf and in Spanish at https://labor.mo.gov/sites/labor/files/pubs_forms/MODES-B-2-S-AI.pdf.

[143] MO. REV. STAT. § 293.050.

[144] MO. REV. STAT. § 290.522. This poster is available in English at https://labor.mo.gov/sites/labor/files/pubs_forms/LS-52-AI.pdf and in Spanish at https://labor.mo.gov/media/pdf/ls-52-s-ai.

[145] MO. REV. STAT. § 290.100. Employers must create their own forms to satisfy this posting requirement, as needed.

[146] MO. REV. STAT. § 287.127. This notice is available in English at https://labor.mo.gov/sites/labor/files/pubs_forms/WC-106-AI-letter.pdf and in Spanish at http://labor.mo.gov/sites/labor/files/pubs_forms/WC-106-S-AI-letter.pdf. It is available in a larger size as well at https://labor.mo.gov/posters#wc.

[147] MO. REV. STAT. §§ 191.765, 191.767. Employers must identify their own forms to satisfy this posting requirement.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	some space as a smoking area and, if so, must clearly post signs marking the designated area.[148]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[149]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[150]	At least 1 year from the date of the personnel action to which any records relate.

[148] MO. REV. STAT. § 191.771. Employers must create their own forms to satisfy this posting requirement, as needed.

[149] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[150] 29 C.F.R. § 1627.3(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[151]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[152]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[153]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[154]	Most recent form must be retained for 1 year.

[151] 29 C.F.R. § 1627.3(b).

[152] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[153] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[154] 29 C.F.R. § 1602.7.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[155]	At least 3 years following the date on which the polygraph examination was conducted.
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[156]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[157]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations;	At least 2 years.

[155] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[156] 29 U.S.C. § 1027.

[157] 29 C.F.R. § 1620.32(a).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[158]	
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and	3 years from the last day of entry.

[158] 29 C.F.R. § 1620.32(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	each workweek).[159] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[160]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the	3 years from the last day of entry.

[159] 29 C.F.R. §§ 516.2, 516.5.

[160] 29 C.F.R. § 516.28.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employee's total remuneration for employment including fringe benefits and prerequisites.[161]	
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[162]	At least 3 years from the last effective date.
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[163]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave;	At least 3 years.

[161] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[162] 29 C.F.R. § 516.5.

[163] 29 C.F.R. § 516.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record.	

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Medical records also must be retained. Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[164]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this;	At least 4 years after the date the tax is due or paid, whichever is later.

[164] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[165]	
Immigration	Employers must retain all completed Form I-9s.[166]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[167]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected;	4 years after the return is due or the tax is paid, whichever is later.

[165] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[166] 8 C.F.R. § 274a.2.

[167] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[168]	
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[169]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[170]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical	At least 30 years.

[168] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[169] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[170] 26 C.F.R. § 31.6001-4.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[171]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program;	Duration of employment plus 30 years.

[171] 29 C.F.R. § 1910.1020(d).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[172]	
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[173]	At least 30 years.
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[174]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[175]	Immediately preceding AAP year.

[172] 29 C.F.R. § 1910.1020(d).

[173] 29 C.F.R. § 1910.1020(d).

[174] 29 C.F.R. §§ 1904.33, 1904.44.

[175] 41 C.F.R. § 60-1.12(b).

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• where possible, the gender, race, and ethnicity of each applicant or internet applicant.[176]	
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[177]	Until final disposition of the complaint, compliance review or action.
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[178]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made;	During the course of the covered contract as well as after the end of the contract.

[176] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[177] 41 C.F.R. §§ 60-1.12, 60-741.80.

[178] 29 C.F.R. § 23.260.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[179]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid.	At least 3 years after the work.

[179] 29 C.F.R. § 13.25.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Contractors employing apprentices or trainees under approved programs must maintain written evidence of: • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[180]	
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[181]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and	At least 3 years from the last date of entry.

[180] 29 C.F.R. § 5.5.

[181] 29 C.F.R. § 4.6.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a certificate of age for employees under 19 years of age.[182]	

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices: Complaint of Discrimination	*Where a complaint of discrimination has been filed, an employer must maintain all:* • personnel or employment records relating to the complainant and to all other employees holding positions similar to that held or sought by the complainant; and • application forms or test papers completed by an unsuccessful applicant or by all other candidates for the same position.[183]	Until final disposition of the complaint.
Fair Employment Practices: Personnel Records	*All employers must retain all personnel or employment records including, but not limited to:* • application forms and other records having to do with hiring, promotion, demotion, transfer, layoff or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[184]	1 year from the date of the record's creation, or from the personnel action involved, whichever is later.
Income Tax	*The following records must be retained for tax purposes:* • each employee's name, address, Social Security number, and period of employment; • amounts and dates of all wage payments subject to withholding tax; • each employee's state income tax withholding allowance certificate;	3 years after the date the taxes became due or the date the taxes were paid, whichever is later.

[182] 41 C.F.R. § 50-201.501.

[183] MO. CODE REGS. ANN. tit 8, § 60-3.010(5).

[184] MO. CODE REGS. ANN. tit 8, § 60-3.010(4).

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• employer's state income tax withholding registration number; • records of all returns, including dates and amounts of payment; • for nonresident employees, records of the allocation of working days in the state; and • any other records that would assist in auditing the employer's records.[185]	
Public Works Contract	*All contractors and subcontractors engaged in the construction of public works must keep full and accurate records for each worker, including:* • names, occupations, and crafts of each individual employed in connection with the public work; • number of hours worked by each person; and • actual hours paid for such work.[186]	1 year following the completion of the public work.
Unemployment Compensation	*Each employing unit must maintain payroll records for each worker, which must include:* • name and Social Security number; • date of hire, re-hire, or return to work after temporary layoff and date, if any, name was removed from payroll; • each day the worker performed services (under certain circumstances, the employer need only record each week the worker performed services); • the place where the work was performed; • the beginning and ending date of each payroll period; • wages paid for each pay period showing separately money wages, cash value of other remuneration, and gratuities if reported to the employer; • special payments for services other than those rendered exclusively in a given pay period, such as annual bonuses, gifts, and prizes, showing separately money payments, other remuneration, nature of payment, and period during which the services were performed; and • hours worked each pay period by each worker that do not constitute employment and the nature of those services.[187]	At least 3 years after the record was made.

[185] MO. CODE REGS. ANN. tit 12, § 10-2.015(29).

[186] MO. REV. STAT. § 290.290.

[187] MO. REV. STAT. § 288.130; MO. CODE REGS. ANN. tit 8, § 10-4.020.

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Wages, Hours & Payroll	*All employers must keep and maintain payroll records for each employee, including:* • name, address, and occupation; • rate of pay; • amount paid each pay period; • hours worked each day and each workweek; and • any goods or services provided by the employer to the employee.[188]	Not less than 3 years.
Workers' Compensation	*The following records of self-insured employers are subject to examination by the Department of Labor and Industrial Relations) and must include:* • payroll records; • loss records, including medical and compensation paid; • insurance rating and premium computations; and • reserves.[189]	None specified.
Workplace Safety: Hazardous Substances	*Relevant information regarding hazardous substances must be available for inspection, including:* • type of substance; • location of substance; • approximate quantities; • properties; and • hazardous characteristics.[190]	None specified.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

3.1(c)(ii) *State Guidelines on Personnel Files*

Missouri law does not address access to personnel files for private-sector employees.

[188] MO. REV. STAT. § 290.520.

[189] MO. CODE REGS. ANN. tit. 20, § 500-6.300.

[190] MO. REV. STAT. § 292.605.

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

As noted in **1.3**, Missouri places limited statutory restrictions on a private employer's use of criminal records for current employees. There are no statutory restrictions on an employer's access to employee credit history or social media, or on an employer's use of polygraph examinations. For more information on background screenings, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Missouri law contains no express provisions regulating drug or alcohol testing of current employees by private employers.

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[191]

3.2(c)(ii) *State Guidelines on Marijuana*

Before the November 2022 election at which Missouri voters approved a ballot measure creating a new recreational marijuana law, and making amendments to the general medical marijuana law, the state had no private-employer-related provisions regarding marijuana use. Afterwards, however, some employment provisions do exist under each type of law.

Although there continue to be no private-employer-related provisions under the limited medical marijuana law, under the amended general medical marijuana law, unless a failure to do so would cause an employer to lose a monetary or licensing-related benefit under federal law, an employer cannot discriminate against a person in hiring, termination, or any term or conditional of employment or otherwise penalize a person, if discrimination is based on:

- the person's status as a qualifying patient or primary caregiver who has a valid identification card, including the person's legal use of a lawful marijuana product off the employer's premises during nonworking hours, unless the person was under the influence of medical marijuana on the premises of the place of employment or during the hours of employment; or
- a positive drug test for marijuana components or metabolites of a person who has a valid qualifying patient identification card, unless the person used, possessed, or was under the

[191] 21 U.S.C. §§ 811-12, 841 *et seq*.

influence of medical marijuana on the premises of the place of employment or during the hours of employment.

However, these prohibitions do not apply to an employee in a position in which legal use of a lawful marijuana product affects in any manner a person's ability to perform job-related employment responsibilities or the safety of others, or conflicts with a bona fide qualification that is reasonably related to the person's employment.[192]

The general medical marijuana law does not permit a prospective, current, or former employee to bring a claim against a prospective, current, or former employer for wrongful discharge, discrimination, or any similar cause of action or remedy based on the employer prohibiting the employee from being under the influence of marijuana while at work or disciplining the employee, up to and including termination, for working or attempting to work while under the influence of marijuana. Additionally, it does not permit:

- operating a vehicle, aircraft, dangerous device, or navigating a boat under the influence of marijuana;
- undertaking a task under the influence of marijuana when doing so would constitute negligence or professional malpractice; or
- consuming medical marijuana in a public place unless provided by law.

It does not mandate health insurance coverage of medical marijuana for qualifying patient use.

The recreational marijuana law contains similar, more general prohibitions, *i.e.*, the law does not allow:

- public use of marijuana;
- driving while under the influence of marijuana;
- operating or being in physical control of any motor vehicle, train, aircraft, motorboat, or other motorized form of transport while under the influence of marijuana;
- consumption of marijuana while operating or being in physical control of a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;
- smoking marijuana within a motor vehicle, train, aircraft, motorboat, or other motorized form of transport while it is being operated;
- smoking marijuana in a location where smoking tobacco is prohibited;
- consuming marijuana in a public place where prohibited;
- conduct that endangers others; and
- undertaking any task while under the influence of marijuana, if doing so would constitute negligence, recklessness, or professional malpractice.[193]

[192] MO. CONST., ART. XIV, § 1(7)(15).

[193] MO. CONST., ART. XIV, § 2(1), (3).

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[194]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[195]

3.2(d)(ii) *State Data Security Breach Guidelines*

Missouri law requires that when a covered entity becomes aware of a security breach involving personal information in any form, the entity must notify the affected class of the breach.[196]

Covered Entities & Information. Under the Missouri law, any person or business that owns or licenses personal information of Missouri residents or any person that conducts business in Missouri that owns or licenses personal information are covered entities. Covered entities do not include an entity that complies with notification as part of their own policy, so long as the policy offers the same or greater protection as the statute; any entity that complies with the notification requirements of their primary or functional regulator; any entity that complies with Title V of the Gramm-Leach-Bliley Act; and a financial institution that complies with the Federal Interagency Guidance.[197]

Under the statute, *personal information* means an individual's first name or first initial and last name in combination with any one or more of the following data elements that relate to the individual if any of

---

[194] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[195] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

[196] MO. REV. STAT. § 407.1500(1).

[197] MO. REV. STAT. § 407.1500(3).

the data elements are not encrypted, redacted, or otherwise altered by any method or technology in such a manner that the name or data elements are unreadable or unusable:

- Social Security number;
- driver's license number or similar number;
- financial account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account;
- unique electronic identifier or routing code, in combination with any required security code, access code, or password that would permit access to an individual's financial account;
- medical information; or
- health insurance information.[198]

Personal information does not include information that is publicly available.

Content & Form of Notice. The notice must include:

1. the incident in general terms;
2. the type of personal information obtained as a result of the breach;
3. a telephone number affected consumers may call for further information and assistance, if one exists;
4. contract information for consumer reporting agencies; and
5. advice that directs the consumer to remain vigilant by reviewing account statements and monitoring free credit reports.[199]

Notice may be in one of the following formats:

- written notice;
- electronic notice, if it is compliant with the federal e-sign act;
- telephonic; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $100,000;
  - the affected class of persons to be notified exceeds 150,000;
  - the information holder does not have sufficient contact information; or
  - the information holder is unable to identify particular affected consumers, for those unidentified consumers.[200]

[198] MO. REV. STAT. § 407.1500(1)(9).

[199] MO. REV. STAT. § 407.1500(4).

[200] MO. REV. STAT. § 407.1500(6).

Substitute notice must consist of all of the following:

- email notice when the information holder has an email address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the information holder maintains a website; and
- notification by statewide media.[201]

Timing of Notice. Notice must be given without unreasonable delay. Notice may be delayed if:

- a law enforcement agency indicates that notification will impede a criminal investigation and requests a delay;
- a covered entity needs time to determine the scope of the breach and restore the integrity and confidentiality of the system; or
- a covered entity needs time to restore the reasonable integrity of the data system; or a covered entity needs time to determine sufficient contact information.[202]

Additional Provisions. If more than 1,000 individuals will be notified of a security breach, then the information holder must also notify the attorney general's office, as well as all nationwide consumer reporting agencies of the timing, distribution, and content of the notices.[203]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[204] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[205]

---

[201] MO. REV. STAT. § 407.1500(7).

[202] MO. REV. STAT. § 407.1500(8).

[203] MO. REV. STAT. § 407.1500(8).

[204] 29 U.S.C. § 218(a).

[205] 29 U.S.C. § 206.

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[206]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[207]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[208] For more information on exemptions to the federal minimum wage and/or overtime obligations, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.3(b) *State Guidelines on Minimum Wage Obligations*

3.3(b)(i) *State Minimum Wage*

As of January 1, 2024, the minimum wage in Missouri is $12.30.[209] Employers must pay employees the state or federal rate, whichever is greater. Annually, on January 1, the minimum wage will increase or decrease based on cost-of-living changes. If the federal minimum wage is greater, the state minimum wage will continue to be increased but the higher federal rate will become the state rate and increased or decreased based on cost-of-living changes for as long as the federal rate exceeds the state rate.

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. If an employee earns tips, the minimum cash wage that a tipped employee must be paid is 50% of the minimum wage per hour. Therefore, an employer may take a maximum tip credit of up to 50% of the minimum wage per hour.[210] Note that if an employee does not make 50% of the minimum wage per hour in tips, an employer must make up the difference between the wage actually made and the current minimum wage rate.

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

Missouri's minimum wage law does not apply to the following categories of workers:

- individuals employed in a *bona fide* executive, administrative, or professional capacity;
- individuals engaged in the activities of an educational, charitable, religious, or nonprofit organization where the employer-employee relationship does not exist or where the services rendered to the organization are on a voluntary basis;
- individuals standing *in loco parentis* to foster children in their care;

---

206 29 U.S.C. §§ 203, 206.

207 29 U.S.C. § 3(m)(2)(B).

208 29 U.S.C. § 207.

209 MO. REV. STAT. § 290.502.

210 MO. REV. STAT. § 290.512; MO. CODE REGS. tit., 8, § 30-4.020.

- individuals employed for less than four months in any year in a resident or day camp for children or youth, or any individual employed by an educational conference center operated by an educational, charitable or not-for-profit organization;
- individuals engaged in the activities of an educational organization where employment by the organization is in lieu of the requirement that the individual pay the cost of tuition, housing, or other educational fees of the organization or where earnings of the individual employed by the organization are credited toward the payment of the cost of tuition, housing, or other educational fees;
- individuals employed on or about a private residence on an occasional basis for six hours or less on each occasion;
- handicapped persons employed in a sheltered workshop, certified by the department of elementary and secondary education;
- any person employed on a casual basis to provide baby-sitting services;
- individuals whose employment is covered under the Railway Labor Act;
- individuals employed on a casual or intermittent basis as a golf caddy, newsboy, or in a similar occupation;
- individuals whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer;
- individuals employed in a government position;
- individuals employed by a retail or service business whose annual gross volume sales made or business done is less than $500,000;
- individuals incarcerated in any correctional facility operated by the state department of corrections, including offenders who provide labor or services on the grounds of such correctional facility; or
- individuals deemed exempt under the federal FLSA.[211]

Further, the minimum wage law does not apply to employees employed in agriculture.[212]

Where an employee is physically or mentally impaired, the employer may not be required to pay that employee the minimum wage rate, but only where the rate to be paid is set by regulation of the Director of the Missouri Department of Labor.[213] However, no such employee may be paid less than the minimum wage where the employee's production levels are within limits required of other employees.[214] By regulation, the Director may also provide that certain learners and apprentices may be paid less than the minimum wage, but no less than $.90 below the minimum wage.[215]

[211] MO. REV. STAT. § 290.500(3).

[212] MO. REV. STAT. § 290.507.

[213] MO. REV. STAT. § 290.515.

[214] MO. REV. STAT. § 290.515.

[215] MO. REV. STAT. § 290.517.

3.3(c) *State Guidelines on Overtime Obligations*

Similar to the federal overtime requirement, Missouri employers are required to pay overtime to employees working longer than 40 hours per week, in an amount of at least one and one-half times their regular rate.[216]

3.3(d) *State Guidelines on Overtime Exemptions*

Missouri's overtime provisions do not apply to employees who are exempt from the FLSA minimum wage or overtime provisions. Further, the categories of employees listed in **3.3(b)(iii)** as exempt from the minimum wage provisions are also exempt from the Missouri overtime provisions.[217]

Missouri expressly adopts the provisions of the FLSA with respect to the executive, administrative, professional, and outside sales exemptions. State law contains no express exemption for commissioned sales employees. However, because the state's overtime provisions do not apply to employees exempt under the FLSA, commissioned sales employees are considered exempt.[218]

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[219] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[220]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[221] Under the FLSA, an employer

---

[216] MO. REV. STAT. § 290.505.

[217] MO. REV. STAT. § 290.500(3).

[218] MO. REV. STAT. §§ 290.500, 290.505; MO. CODE REGS. tit. 8, § 30-4.010.

[219] 29 C.F.R. § 785.19.

[220] 29 C.F.R. § 785.18.

[221] 29 U.S.C. § 218d.

must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[222] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[223] Exemptions apply for smaller employers and air carriers.[224]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[225] Lactation is considered a related medical condition.[226] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[227] For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

There are no generally applicable meal or rest period requirements for adults in Missouri. According to the state Department of Labor and Industrial Relations, "Missouri law does not require employers to provide employees a break of any kind, including a lunch hour. These provisions are either left up to the discretion of the employer, can be agreed upon by the employer and employee, or may be addressed by company policy or contract."[228] Employers covered under the FLSA should review federal regulations governing whether meal periods are considered compensable work time.

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no generally applicable meal and rest period requirements for minors in Missouri. However, special requirements exist for minors in the entertainment industry.[229]

---

[222] 29 U.S.C. § 218d(b)(2).

[223] 29 U.S.C. § 218d(a).

[224] 29 U.S.C. § 218d(c), (d).

[225] 42 U.S.C. § 2000gg–1.

[226] 29 C.F.R. § 1636.3.

[227] 29 C.F.R. § 1636.3.

[228] Missouri Dep't of Labor & Indus. Relations, *Breaks, Lunches, and Personal Time Off*, *available at* https://labor.mo.gov/dls/general/breaks-lunches-personal-time-off.

[229] *See* MO. REV. STAT. § 294.022.

3.4(b)(iii) *Lactation Accommodation Under State Law*

Under Missouri law, an individual has the right to breast feed in any public or private location where the individual and their child are otherwise authorized to be present.[230] Although the law does not specifically mention employers, it can be construed to include places of employment.

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[231] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[232]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

Missouri law does not address general hours of work or compensable activities. Employers covered by the FLSA should consult the federal provisions. In addition, Missouri expressly adopts the FLSA provisions with respect to travel time.[233]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to

[230] MO. REV. STAT. § 191.918.

[231] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[232] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

[233] MO. REV. STAT. §§ 290.500, 290.505; MO. CODE REGS. tit. 8, § 30-4.010.

approved school-supervised and school-administered work experience and career exploration programs.[234] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[235] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

The purpose of Missouri's child labor statutes is to ensure "that no child under sixteen years of age is employed in an occupation, or in a manner, that is hazardous or detrimental to the child's safety, health, morals, educational processes, or general well-being."[236]

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Missouri's child labor statute restricts the employment of minors by age and by the type of job (see Table 9). Note that Missouri law contains prohibitions for children 14 and 15 years, but does not include provisions prohibiting any occupation for those 16 and 17 years of age.[237] Employers should adhere to the more stringent federal standard to ensure full compliance.

Table 9. State Restrictions on Type of Employment by Age

Age Range	Restrictions
Under 16	*In Missouri, minors under age 16 cannot work in connection with:* • power driven machinery; • oiling, cleaning, maintenance, or washing of machinery; • ladders, scaffolding, or their substitute; • mining or quarrying; • stone cutting or polishing; • plant manufacturing, processing, storing or transporting explosives, ammunitions, or like materials; • operation of any motor vehicle; • blast furnaces, rolling mills, foundries, forging shops, or in establishments where heating of metals is carried out, or where cold rolling, stamping, shearing, or punching of metal stock occurs; • saw and cooperage stock mills, and where woodworking machinery is used; • operation of freight elevators, hoisting machines, cranes, or manlifts; • occupations involving exposure to ionizing or nonionizing radiation, or toxic or hazardous chemicals;

[234] 29 C.F.R. §§ 570.36, 570.50.

[235] 29 C.F.R. § 570.6.

[236] MO. REV. STAT. § 294.005.

[237] Special rules apply to children employed in the entertainment industry. *See* MO. REV. STAT. §§ 294.022.2 to 294.022.8.

Table 9. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• a motel, resort, hotel, where sleeping accommodations are furnished except in offices or locations physically separated from the sleeping accommodations; • street occupations connected with peddling, begging, door-to-door sales on or about public places or streets, except in connection with public school, religious or charitable fundraising activities or distribution of literature; and • any other occupation or place of employment dangerous to the life, limb, health, or morals of minors under age 16.[238]
Under Age 14	Minors under age 14 cannot be employed, subject to limited exceptions.[239]

Restrictions on Selling or Serving Alcohol. In Missouri, minors under age 16 cannot work at any place or establishment in which alcohol intoxicating alcoholic liquors or beverages are manufactured, bottled, stored, or sold for consumption on or off the premises, except in establishments where at least 50% of the gross sales consist of goods, merchandise, or commodities other than alcoholic beverages.[240]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

In Missouri, minors under age 16 cannot work:

- more than three hours per day on a school day;
- more than eight hours a day on a nonschool day;
- more than 40 hours in one week;
- more than six days in one week; and
- between 7:00 P.M. and 7:00 A.M., except that a minor can work until 9:00 P.M. from June 1 to Labor Day.[241]

Special rules apply to minors aged 14 and15 that work at a regional fair from June 1 to Labor Day. Additionally, the state labor department may waive the above requirements.[242]

3.6(b)(iii) *State Child Labor Exceptions*

Missouri's child labor laws do not apply to any child working under the direct control of the child's parent. The term *employ*, for purposes of the state child labor laws, does not include the following services which may be performed by any child over 12 years:

- the delivery or sales of newspapers;

[238] MO. REV. STAT. §§ 294.040, 294.043.

[239] MO. REV. STAT. § 294.021.

[240] MO. REV. STAT. § 294.040.

[241] MO. REV. STAT. § 294.030.

[242] MO. REV. STAT. § 294.030.

- child care;
- occasional yard or farm work, including agriculture work performed by a child with the knowledge and consent of the child's parent, provided that no child is permitted to engage in any activities prohibited by section 294.040, as described in Table 9; and
- participating in a youth sporting event as a referee, coach, or other position necessary to the sporting event, except that a child cannot work at a concession stand.[243]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

A child may not be employed in Missouri during the regular school term unless the child has been issued a work certificate or a work permit.[244] The superintendent of schools in a minor's school district issues the work certificate.[245] The employer must provide a statement of intention to employ that sets forth the specific nature of the occupation in which the minor will be employed, and the exact hours of the day, the number of hours per day and the days per week of employment.[246] The employer must keep the work certificate on file and must post in a conspicuous place in the employer's place of business a list of all minors under age 16 who are employed there. Upon a minor's termination of employment, the employer must return the work certificate to the issuing agency.[247]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

The Director of the Division of Labor Standards enforces the Missouri child labor laws.[248] An employer that violations any of the child labor provisions is guilty of a Class C misdemeanor.[249] In addition to the criminal violation, an employer may be held liable for civil damages of not less than $50 but not more than $1,000 for each violation. Each day a violation continues constitutes a separate violation. Each minor employed or permitted to work in violation of the child labor laws also constitutes a separate violation. The director may bring a civil action to enforce the child labor provisions.[250]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[251]

---

[243] MO. REV. STAT. § 294.011.

[244] MO. REV. STAT. § 294.024.

[245] MO. REV. STAT. § 294.045.

[246] MO. REV. STAT. § 294.051.

[247] MO. REV. STAT. § 294.060.

[248] MO. REV. STAT. § 294.090.

[249] MO. REV. STAT. § 294.110.

[250] MO. REV. STAT. § 294.121.

[251] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[252]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[253]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[254] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[255]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a

---

[252] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

[253] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[254] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[255] 12 C.F.R. § 1005.2(b)(3)(i)(A).

statement regarding state-required information or other fee discounts or waivers.[256] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[257]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[258]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[259]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in **3.7(a)(ii)**, wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

---

[256] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[257] 12 C.F.R. § 1005.18.

[258] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[259] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[260] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[261] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[262] tools and equipment,[263] and business transportation and travel.[264] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[265]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[266]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[267]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[268]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;

---

[260] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[261] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[262] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[263] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[264] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[265] 29 C.F.R. § 778.217.

[266] 29 C.F.R. § 531.38.

[267] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[268] 29 C.F.R. § 531.40.

  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[269]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[270] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[271]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[272]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[273] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[274]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is

---

[269] 29 C.F.R. § 531.40.

[270] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[271] 29 C.F.R. § 825.213.

[272] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[273] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[274] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[275]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[276]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[277]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

The Missouri statutes do not address the permissible methods of wage payment.

3.7(b)(ii) *Frequency of Payment Under State Law*

In Missouri, an employer must pay its nonexempt employees at least semi-monthly, with wages paid no more than 16 days following the end of the pay period. Executive, administrative, and professional employees may be paid monthly. Salespeople and other employees compensated in whole or in part on a commission basis also may be paid monthly. Special rules apply to manufacturers, mines, and stone or granite quarries.[278]

3.7(b)(iii) *Final Payment Under State Law*

An employee's final wages become due and payable to the employee on the day of the employee's discharge or the employer's refusal to continue to employ the employee.[279] However, this rule does not apply to employees whose compensation consists primarily of commissions, and whose duties include collection of accounts, care of stock or merchandise, and similar activities, and where an audit is necessary or customary to determine the net amount due.[280]

The employee may request that the employee's final wages be sent to any office with a regular agent of the employer, in which case the employee must receive the money or check within seven days.[281] If the

---

[275] 29 C.F.R. § 531.36.

[276] 29 C.F.R. § 531.37.

[277] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[278] MO. REV. STAT. § 290.080.

[279] MO. REV. STAT. § 290.110.

[280] MO. REV. STAT. § 290.110.

[281] MO. REV. STAT. § 290.110.

employee does not receive final wages within the time required, the employer owes additional wages to the discharged employee, beginning with the day of the employee's termination to the time the employer pays the employee final wages, but not in excess of 60 days. An employee may not recover against the employer for violation of the final wages statute if the employee refuses to receive payment for wages due, or purposefully avoids receipt of said payment.[282]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

Missouri employers must provide employees a wage statement at least once per month either as a part of the check, draft, or other voucher paying wages or separately, showing the total amount of deductions for the period.[283]

3.7(b)(v) *Wage Transparency*

Missouri law does not address whether an employer may prohibit employees from disclosing their wages or from discussing and inquiring about the wages of other employees.

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Changing Regular Paydays. There is no requirement in Missouri that an employer notify employees prior to a change in payday. However, it is recommended that employees receive advance written notice before a change occurs.

Changing Pay Rate. For changes to employees' rate of pay, employers must give employees 30 days' notice of a wage decrease. An employer may provide such notice by conspicuously posting a written or printed handbill specifying the class of employees whose wages will be decreased and the reduction in amount, or by mailing each employee a copy of the notice.[284]

3.7(b)(vii) *Paying for Expenses Under State Law*

In Missouri, there is no general obligation to indemnify an employee for business expenses. However, specific requirements exist concerning whether an employee may be required to pay for transportation expenses, uniforms, tools, and equipment.

Transportation. An employer cannot apply the fair market value of the transportation furnished to employees which is an incident of and necessary to employment (*e.g.*, travel costs of railroad maintenance-of-way workers) towards satisfying its minimum wage and/or overtime obligations. However, an employer can apply the fair market value of transportation furnished to employees between their homes and work which is not necessary to employment towards satisfying its minimum wage and/or overtime obligations.[285]

Uniforms. An employer cannot apply the fair market value of the following towards satisfying its minimum wage and/or overtime obligations:

- uniforms, including, but not limited to, garments such as suits, dresses, aprons, etc. worn by employees as a condition of employment. Apparel of a similar design, color, or material, or

[282] MO. REV. STAT. § 290.110.

[283] MO. REV. STAT. § 290.080.

[284] MO. REV. STAT. § 290.100.

[285] MO. CODE REGS. tit. 8, § 30-4.050.

forming part of the decorative pattern of the establishment or distinguishing the employee as an employee of the business is presumed to be worn as a condition of employment;

- laundering or cleaning of uniforms;
- maintenance of uniforms;
- breakage or loss of uniforms; or
- any other item required by the employer to be worn or used by the employee as a condition of employment.[286]

Tools & Equipment. An employer cannot apply the fair market value of the following towards satisfying its minimum wage and/or overtime obligations:

- maintenance of tools or equipment; and
- breakage or loss of tools or equipment.[287]

3.7(b)(viii) *Wage Deductions Under State Law*

Permissible Deductions. According to the Missouri Department of Labor & Industrial Relations, "deductions for the employer's benefit (such as deductions for damage caused by the employee or for repayment of loans to the employee)" can be made, "but only so long as any such deduction does not take a covered employee's wages below the state hourly minimum wage rate."[288] Examples of such deductible items include:

- meals;
- lodging;
- tuition furnished by a college to its student employees;
- merchandise furnished at company stores and commissaries;
- fuel (including coal, kerosene, firewood, and lumber slabs);
- electricity, water, and gas furnished for the noncommercial personal use of the employee; and
- transportation furnished to employees between their homes and work, where the transportation is not necessary to the employment.[289]

Prohibited Deductions. The wage deduction provisions do not include any specific deductions that are prohibited. Thus, so long as a deduction meets the requirements set forth above, it is permissible under state law.

---

[286] MO. CODE REGS. tit. 8, § 30-4.050.

[287] MO. CODE REGS. tit. 8, § 30-4.050.

[288] Missouri Dep't of Labor & Indus. Relations, *Minimum Wage Frequently Asked Questions*, *available at* https://molabor.uservoice.com/knowledgebase/topics/38065-minimum-wage/.

[289] MO. CODE REGS. tit. 8, § 30-4.050.

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Orders of Support. In the event an employee is subject to an income withholding order for child or spousal support, the issuing court will provide written notice of the order to the employer. The employer must begin withholding pursuant to the notice two weeks after the date the notice was mailed or served electronically. The employer must transmit the amount withheld according to the notice no later than seven business days after payday.[290] The amount that may be withheld for child support is limited by the federal Consumer Credit Protection Act (CCPA). In addition to the amounts withheld for support, an employer is permitted to withhold a maximum administrative fee of $6 to offset any costs of complying with the order.[291] An employer is prohibited from discharging, disciplining, or refusing to hire an employee as a result of a withholding order. An employee alleging a violation of the antidiscrimination provision may bring a civil contempt proceeding against the employer by filing an appropriate motion in the court that issued the withholding notice.[292]

Debt Collection. Missouri law also requires an employer to comply with an order of garnishment issued against an employee to enforce a creditor judgment. As with an order of support, the federal CCPA limits apply to a garnishment withholding. However, for an employee who is a Missouri resident and the head of a household, the withholding limit is 10% of the employee's disposable earnings subject to garnishment, or the CCPA limit, whichever is less.[293] The employer must continue withholding for and paying a continuous wage garnishment until the judgment is paid in full, or the employment relationship ends, whichever occurs first.[294] The employer is permitted to withhold a one-time administrative fee of no more than $20 for the cost of complying with a creditor garnishment in addition to the amount withheld from the employee to satisfy the garnishment.[295]

An employer is prohibited from discharging an employee by reason of the fact that the employee's earnings are subject to garnishment, and a willful violation of this provision is a misdemeanor.[296]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

The Department of Labor and Industrial Relations enforces Missouri's wage and hour laws.[297] An aggrieved employee may file an administrative wage complaint with the department, which has the authority to investigate and resolve such complaints.[298]

State law also permits an employee a private right of action to file suit against an employer for underpayment of wages. The employer may be held liable to the employee for the full amount of the wage rate and an additional equal amount as liquidated damages, less any amount actually paid to the

[290] MO. REV. STAT. § 452.350.

[291] MO. REV. STAT. § 452.350.

[292] MO. REV. STAT. § 452.350.

[293] MO. REV. STAT. § 525.030.

[294] MO. REV. STAT. § 525.040.

[295] MO. REV. STAT. § 525.230.

[296] MO. REV. STAT. § 525.030.

[297] MO. REV. STAT. § 290.510.

[298] MO. CODE REGS. tit. 8, § 30-4.060.

employee and for costs and reasonable attorneys' fees. Actions for unpaid wages must be filed within two years of the alleged violation.[299]

Violations of the Missouri wage and hour laws may also incur civil and criminal penalties. An employer that violates the pay frequency provision is guilty of a misdemeanor and may be fined not less than $50 or more than $500 for each offense.[300] Violation of the minimum wage and overtime provisions is a Class C misdemeanor, and each day the employer is in violation constitutes a separate offense.[301]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[302] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[303] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[304]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

There is no requirement under Missouri law that an employer must offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. Vacation pay is not governed by statute and is a matter of an employer's internal policies or a contract between the employer and its employees. However, once an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice. Thus, there is no statutory or regulatory provision prohibiting an employer from implementing caps on accrual or a "use-it-or-lose-it"

---

[299] MO. REV. STAT. § 290.527.

[300] MO. REV. STAT. § 290.080.

[301] MO. REV. STAT. § 290.525.

[302] 29 U.S.C. § 1002.

[303] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[304] 490 U.S. 107, 119 (1989).

policy. Further, an employer's vacation policy may require forfeiture of accrued vacation upon termination as long as the policy clearly so provides.[305]

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

In Missouri, an employer cannot refuse to hire an individual or deny an employee advancement because of the employee's refusal to work on the employee's normal day of worship.[306]

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[307] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[308] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[309] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

---

[305] *See, e.g.*, *Hoffmeyer v. Davco Food, Inc.*, 803 S.W.2d 49 (Mo. Ct. App. 1990); *Logue v. Carthage*, 612 S.W.2d 148 (Mo. Ct. App. 1981); *Webster Groves v. Institutional & Pub. Emps. Union*, 524 S.W.2d 162 (Mo. Ct. App. 1975).

[306] MO. REV. STAT. § 578.115.

[307] 29 U.S.C. § 1144.

[308] 29 U.S.C. § 1161.

[309] 29 U.S.C. § 1167(3).

3.8(c)(ii) *State and Local Guidelines on Domestic Partnerships & Civil Unions*

In Missouri, couples may register as domestic partners in Jackson County and in the cities of St. Louis, Kansas City, Columbia, Clayton, Olivette, and University City. However, state law does not address the issue of whether an employee's domestic partner would be considered an eligible dependent for purposes of employee benefits.

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[310]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[311]
- to take medical leave when the employee is unable to work because of a serious health condition;[312]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[313] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[314] For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Missouri law does not address family and medical leave for private-sector employees.

---

[310] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[311] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[312] 29 C.F.R. §§ 825.112, 825.113.

[313] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[314] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[315] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

Missouri law does not address paid sick leave for private-sector employees.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[316] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for their own serious health condition, such as severe morning sickness.[317] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

---

[315] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[316] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[317] 29 C.F.R. § 825.202.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[318] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

In Missouri, disabilities caused or contributed to by pregnancy, miscarriage, legal abortion, child birth, or recovery are, for all job-related purposes, temporary disabilities and must be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment.[319]

Written and unwritten employment policies and practices involving matters such as commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or temporary disability insurance or sick leave plan must be applied to disabilities due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.[320]

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Missouri law does not address adoptive parents leave for private-sector employees.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

---

[318] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

[319] MO. CODE REGS. ANN. tit. 8, § 60-3.040(16).

[320] MO. CODE REGS. ANN. tit. 8, § 60-3.040(16).

3.9(e)(ii) *State Guidelines on School Activities Leave*

Missouri law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

Missouri law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Missouri law grants employees up to three hours of time off, during the time that the polls are open, for the purpose of voting.[321] The statute does not apply to employees who on the day of the particular election are not in the service of the employer for three consecutive hours during which the polls are open. The law prohibits employers from disciplining or discharging an employee for taking time off to vote, or garnishing employee wages for time taken off to vote, so long as the employee requests time off prior to the day of election.[322]

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Missouri law does not address leave for private-sector employees to participate in political activities, although there are antidiscrimination protections discussed in 3.11(a)(iv).

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[323] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can

[321] MO. REV. STAT. § 115.639.

[322] MO. REV. STAT. § 115.639.

[323] 28 U.S.C. § 1875.

set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[324] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. Missouri law protects employees called to jury duty from any adverse employment action taken by their employer. Specifically, "[a]n employer shall not terminate, discipline, threaten or take adverse actions against an employee on account of that employee's receipt of or response to a jury summons."[325]

An employee who is terminated because of jury duty may file a civil action against their employer within 90 days of the discharge for lost wages, reinstatement, and other damages.[326] Prevailing employees are also entitled to reasonable attorneys' fees. Finally, "[a]n employee may not be required or requested to use annual, vacation, personal or sick leave for time spent responding to a summons or jury duty, time spent participating in the jury selection process, or time spent actually serving on a jury."[327]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Victim of Crime. Missouri law allows the victim, or immediate family of a victim, time off of work to honor a subpoena to testify in a criminal proceeding, attend a criminal proceeding, or participate in the preparation of a criminal proceeding. There is no requirement that the employee be compensated for absences taken pursuant to the statute. Further, an employer may not require an employee to use vacation time, personal time, or sick leave during such absences.[328]

Domestic Violence Leave. Missouri law requires an employer with 50 or more employees to provide two weeks of leave for issues relating to domestic violence or abuse and requires employers with more than 20 employees, but less than 49 employees, to provide one week of leave for issues relating to domestic violence or abuse. Employees are eligible to use this leave if they are victims of domestic or sexual

---

[324] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[325] MO. REV. STAT. § 494.460(1).

[326] MO. REV. STAT. § 494.460.

[327] MO. REV. STAT. § 494.460.

[328] MO. REV. STAT. § 595.209.

violence, or the employee's family or household member is a victim of domestic or sexual violence.[329] The following individuals are covered family and household members: a spouse, parent, son, daughter, other persons related by blood, person related by present or prior marriage, a person who shares a relationship through a son or daughter, or persons jointly residing in the same household. *Parent* includes an individual who stood *in loco parentis* to an employee as a child. Additionally, *son* and *daughter* includes biological, adopted, a stepchild, a foster child, a legal ward, or a child standing *in loco parentis*, who is under 18 years old, or is 18 years or older and is incapable of self-care because of mental or physical disabilities.[330]

Leave must be used for the purpose of addressing an incident of domestic or sexual violence, including by: seeking medical attention for or recovering from physical or psychological injuries inflicted by domestic or sexual violence; obtaining services from a victim services organization; obtaining psychological or other counseling; participating in safety planning, temporarily or permanently relocating, or taking other actions to increase the victim's safety from future domestic or sexual violence, or to ensure economic security; or seeking legal assistance or remedies, including preparing or participating in any civil or criminal legal proceeding related to the domestic or sexual violence. There is no requirement that the employee be compensated for absences pursuant to the statute.[331]

Employees must provide the employer with at least 48 hours of advance notice of the employee's intention to take leave, unless providing such notice would not be practicable. When an unscheduled absence occurs, an employer may not take any action against the employee if the employee provides certification upon the employer's request, as discussed below.[332]

Employers are not prohibited from requiring an employee on leave to report periodically to the employer on the status and intention of the employee to return to work.[333]

The new law permits an employer to request certification that the employee or the employee's family or household member is a victim of domestic or sexual violence, and the leave was taken for one of the qualifying purposes. An employee must provide the certification within a reasonable period of time after the employer requests the certification. The certification requirement may be satisfied by providing the employer with a sworn statement plus one of the following forms of documentation:

- documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional from whom the employee or an employee's family or household member sought assistance in addressing the incident;
- a police or court record; or
- other corroborating evidence.

Additionally, employers may require certification if an employee claims that they are unable to return to work. Certification must be made in a reasonable period of time after making the claim that the employee

[329] MO. REV. STAT. § 285.630.

[330] MO. REV. STAT. § 285.625.

[331] MO. REV. STAT. § 285.630.

[332] MO. REV. STAT. § 285.630.

[333] MO. REV. STAT. § 285.630.

is unable to return to work. Certification may be satisfied by any of the certification methods listed above.[334]

All information provided to an employer must be retained in the strictest confidence by the employer, including statements from the employee, or any other documentation, record, or corroborating evidence, and the request or obtaining of leave. Disclosure may occur if an employee requests or consents to disclosure in writing, or otherwise when required by federal or state law.[335]

Taking leave must not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.[336] Employee benefits may include all benefits provided or made available to employees by an employer, including life insurance, health insurance, disability insurance, sick leave, annual leave educational benefits, pensions, and profit-sharing, regardless if benefits are provided by a practice or an employer's written policy, or through an employee benefit plan.[337] However, the new law does not entitle any restored employee to the accrual of any seniority of employment benefits during any period of leave or any right, benefit, or position of employment other than any to which the employee would have been entitled had the employee not taken leave.[338]

During any period that an employee takes leave, the employer must maintain coverage for the employee and any family or household member under any group health plan for the duration of the leave at the level and the conditions coverage that would have been provided if employee had continued employment continuously for the duration of the leave. Employers may recover health insurance premiums from the employee if the employer paid for maintaining coverage under the group health plan during any period of leave if the employee fails to return from leave after the period of leave has expired for a reason other than the continuation, recurrence, or onset of domestic violence or sexual violence that entitled the employee to leave, or other circumstances beyond the employee's control.[339]

An employee returning from leave is entitled to be restored to the position of employment the employee held when the leave commenced or an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.[340]

In addition to the leave provisions, covered employers must timely provide reasonable safety accommodations for employees for the known limitations resulting from the circumstances relating to an employee or an employee's family or household member experiencing domestic or sexual violence.[341] Reasonable safety accommodations include an adjustment to a job structure, workplace, or work requirement, including: transfer, reassignment, modified schedule, leave from work, a changed telephone number or seating assignment, installation of a lock, implementation of a safety procedure, or assistance in documenting domestic violence that occurs at the workplace or in work-related settings, in response to actual or threatened domestic violence. Exigent circumstances or danger facing the

[334] MO. REV. STAT. § 285.635.

[335] MO. REV. STAT. § 285.635.

[336] MO. REV. STAT. § 285.630.

[337] MO. REV. STAT. § 285.625.

[338] MO. REV. STAT. § 285.630.

[339] MO. REV. STAT. § 285.635.

[340] MO. REV. STAT. § 285.630.

[341] MO. REV. STAT. § 285.650.

employee, or an employee's family or household member, is considered in determining whether the accommodation is reasonable.[342]

Employers may be exempt from providing a safety accommodation if the employer demonstrates that the safety accommodation would impose an undue hardship on the employer's operation.[343] An *undue hardship* is a significant difficulty or expense, when considered considering the nature and cost of the reasonable safety accommodation.[344] Employees requesting reasonable safety accommodations must provide the employer a written statement signed by the employee, or an individual acting on the employee's behalf, certifying that the reasonable safety accommodation is for a purpose authorized under the law.[345]

Covered employers must provide employees with a notice, to be prepared or approved by the Director of the Department of Labor and Industrial Relations ("Director"), summarizing the requirements of the law. The notice may be provided in electronic form and must be provided at the start of employment. The Director will furnish copies of summaries and rules to employers upon request without charge.[346]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[347]

---

[342] MO. REV. STAT. § 285.625.

[343] MO. REV. STAT. § 285.650.

[344] MO. REV. STAT. § 285.625.

[345] MO. REV. STAT. § 285.630.

[346] MO. REV. STAT. § 285.665.

[347] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.348 An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.349 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Service Leave. Missouri law provides that any Missouri employee who is a member of the national guard of another state and who is called into active state duty by the governor of that state or any member of any reserve component of the Armed Forces of the United States who is called to active duty is guaranteed the same reemployment rights as required under the federal USERRA (see **3.9(k)(i)**).[350]

Other Military-Related Protections: Spousal Unemployment. An unemployment claimant will not be disqualified if her or she left work due to their spouse's mandatory and permanent military change of station order. The claimant must have quit work to relocate with the spouse to a new residence from which it is impractical to commute to the place of employment and the claimant remained employed as long as was reasonable prior to the move. The claimant's spouse must be a member of the U.S. armed forces who is on active duty, or a member of the National Guard or other reserve component of the U.S. armed forces who is on active National Guard or reserve duty.[351]

In addition, "war on terror veterans" are entitled to unemployment compensation benefits. A *war on terror veteran* is defined as a member of the National Guard or armed forces reserves who was: (1) deployed any time after September 11, 2001 and, as a result, was unable to continue working for their employer; (2) employed either full-time or part-time prior to deployment; and (3) unemployed in their nonmilitary employment either during deployment or within 30 days after the completion of the individual's deployment.[352]

---

348 29 C.F.R. § 825.126(a).

349 Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

350 MO. REV. STAT. § 40.490.

351 MO. REV. STAT. § 288.050.

352 MO. REV. STAT. § 288.042.

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Volunteer Emergency Responder Leave. An employer may not terminate an employee who is a volunteer firefighter, member of Missouri-1 Disaster Medical Assistance Team, Missouri Task Force One, Urban Search and Rescue Team, or the Federal Emergency Management Agency (FEMA) who is late to or absent from work while responding to an emergency. The employee must make reasonable efforts to notify their employer of the leave and the employee must upon request provide written documentation from a supervisor of the date, time, and employee's response to the emergency. The leave may be unpaid.[353]

Civil Air Patrol. Members of the Civil Air Patrol "may be granted leave of absence from their respective duties, without loss of time, pay, regular leave, impairment of efficiency rating or of any other rights or benefits to which such person would otherwise be entitled, for periods during which such person is engaged in the performance of civil air patrol emergency service duty or counter narcotics missions."[354] The leave for service must not affect the individual's leave status. It will be unlimited in time when an individual is responding to a state or nationally declared emergency or disaster in the state of Missouri, but should not exceed 15 working days in any state fiscal year for all other service.[355]

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[356] Employers are also required to comply with all applicable occupational safety and health standards.[357] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are

---

[353] MO. REV. STAT. § 320.336.

[354] MO. REV. STAT. § 41.1000.

[355] MO. REV. STAT. § 41.1000.

[356] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[357] 29 U.S.C. § 654(a)(2).

comparable standards under the federal law.[358] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Missouri does not have an independent occupational and safety agency or an approved state plan under the Fed-OSH Act, however, it has certain statutes regulating the general safety of all workplaces.[359] The safety statutes address items such as notifying the Director of Labor and Industrial Relations that a factory is occupied.[360] The statutes also include simple safety rules for things like safety guards, fire escapes, doors, scaffolding warnings, ventilation, and overcrowding.[361]

All accidents that cause death or four or more lost days of work are to be reported to the Department of Labor and Industrial Relations' inspection section and to the city or county physician, if there is one.[362] Violators of the statutes may be fined up to $500 per offense and found guilty of a misdemeanor.[363]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

State law prohibits a person from operating a noncommercial motor vehicle or a commercial motor vehicle while:

- physically holding or supporting an electronic communication device;
- writing, sending, or reading any text-based communication, including but not limited to a text message, instant message, email, or social media interaction on an electronic communication device;
- making any communication on an electronic communication device, including a phone call, voice message, or one-way voice communication;
- engaging in any form of electronic data retrieval or electronic data communication on an electronic communication device;
- watching a video or movie on an electronic communication device, other than watching data related to the navigation of the vehicle;
- manually entering letters, numbers, or symbols into any website, search engine, or application on an electronic communication device; or
- recording, posting, sending, or broadcasting video, including a video conference, on an electronic communication device, except that this prohibition does not apply to electronic

[358] 29 U.S.C. § 667(c)(2).

[359] *See* chapter 292 of the Revised Statutes of Missouri.

[360] MO. REV. STAT. § 292.010.

[361] MO. REV. STAT. §§ 292.020 *et seq*.

[362] MO. REV. STAT. § 292.190.

[363] MO. REV. STAT. § 292.210.

devices used for the sole purpose of continually monitoring driver behavior by recording or broadcasting video inside or outside of the vehicle.

However, a driver may use a voice-operated or hands-free feature or function to make a call or send a message, provided that the driver does not divert their attention from the road. There are several other exceptions to the above prohibitions, including the use of a mobile device while parked on the side of the road and use of a navigation system.

In addition, the law supersedes all local laws, ordinances, orders, rules, or regulations enacted by a county, municipality, or other political subdivision enacted to regulate the use of hand-held electronic wireless communication devices by drivers. A violation of this law is an infraction and a moving violation.[364]

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. Employers may prohibit concealed weapons on company property by posting the premises as being off-limits to concealed firearms by means of one or more signs displayed in a conspicuous place.[365] Required signs must be no smaller than eleven inches by fourteen inches, with the writing thereon in letters of not less than one inch.[366]

An employer may also prohibit concealed weapons in company vehicles.[367]

Firearms in Company Parking Lots. Missouri law does not specifically address firearms in employer parking lots.

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

Smoking is prohibited in a place of work.[368] Smoking areas may be designated, but may be no larger than 30% of the entire workplace, and must ensure proper separation through ventilation systems and physical barriers.[369] "No smoking" signs must be posted at all entrances. If a smoking area is designated, signs must be posted to clearly mark the designated smoking area.[370]

---

[364] MO. REV. STAT. § 304.822.

[365] MO. REV. STAT. § 571.107.1(15).

[366] MO. REV. STAT. §§ 571.107.1(15), 571.215.1(15).

[367] MO. REV. STAT. § 571.107.1(15).

[368] MO. REV. STAT. §§ 191.765, 191.767.

[369] MO. REV. STAT. § 191.771.

[370] MO. REV. STAT. § 191.771.

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Missouri law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Missouri law does not address employer workplace violence protection orders.

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[371] (2) the Americans with Disabilities Act (ADA);[372] (3) the Age Discrimination in Employment Act (ADEA);[373] (4) the Equal Pay Act;[374] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[375] (6) the Civil Rights Acts of 1866 and 1871;[376] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;

[371] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[372] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[373] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[374] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[375] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[376] 42 U.S.C. §§ 1981, 1983.

- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[377]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[378] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[379]

3.11(a)(ii) *State FEP Protections*

Missouri's comprehensive FEP law is the Missouri Human Rights Act (MHRA).[380] The MHRA prohibits discrimination on the basis of the following:

- race;
- color;
- religion;
- national origin;
- sex (including pregnancy[381]);
- ancestry;
- age;
- disability;[382] or
- status as a medical or recreational user of marijuana during nonworking hours.[383]

The MHRA's definition of *employer* includes "any person employing six or more persons within the state, and any person directly acting in the interest of an employer, but does not include corporations and associations owned and operated by religious or sectarian groups."[384] The word *person* "includes one or

---

[377] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[378] The EEOC's website is available at http://www.eeoc.gov/.

[379] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

[380] MO. REV. STAT. §§ 213.010 *et seq*.

[381] MO. CODE REGS. ANN. tit. 8, § 60-3.040.

[382] MO. REV. STAT. § 213.055.

[383] Article XIV of the Missouri Constitution.

[384] MO. REV. STAT. § 213.010(7). The MHRA also covers employment agencies and labor organizations. *See* MO. REV. STAT. § 213.010(8), (12).

more individuals, corporations, partnerships, associations, organizations, labor organizations, legal representatives, mutual companies, joint stock companies, trusts, trustees, trustees in bankruptcy, receivers, fiduciaries, or other organized groups of persons."[385]

3.11(a)(iii) *State Enforcement Agency & Procedures*

The MHRA is enforced by the Missouri Commission on Human Rights (MCHR or "Commission").[386] A claimant has 180 days from the date of the alleged discrimination to file their charge of discrimination with the MCHR.[387] A charge filed with another investigating agency (such as the EEOC or local commissions certified by the MCHR) may suffice.[388] The 180-day statute of limitations, which begins when the claimant learns of the discrimination or retaliation, is subject to the continuing violation doctrine as well as principles of waiver, estoppel, and tolling.[389]

The MHRA calls for the Director of the MCHR to investigate charges promptly.[390] If the MCHR determines that probable cause exists, the Director is called upon to "immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion."[391] If the Commission fails to eliminate the discriminatory practice by conciliation, then it may serve written notice on the respondent to answer the charges at a hearing and make a determination.[392]If the MCHR does not adjudicate the claim, or if it does not make a finding of probable cause, the MCHR issues a right-to-sue letter to the claimant.[393] Obtaining a right-to-sue letter is a mandatory prerequisite to filing a civil action under the MHRA.[394]

3.11(a)(iv) *Additional Discrimination Protections*

Alcohol or Tobacco Products. Missouri has a law forbidding discrimination based on an employee's use of alcohol or tobacco products off premises during nonwork hours, so long as the use of alcohol or tobacco does not interfere with the duties and performance of the employee, coworkers or overall business operations of the employer.[395] The law does not apply to religious and certain not-for-profit organizations whose principal business is health care promotion.[396]

Engaging in Political Activities. An employer may not:

---

385 MO. REV. STAT. § 213.010(14).

386 MO. REV. STAT. §§ 213.020, 213.075, and 213.085.

387 MO. REV. STAT. § 213.075.

388 MO. REV. STAT. § 213.075(2).

389 *Plengemeier v. Thermadyne Indus*., 409 S.W.3d 395 (Mo. Ct. App. 2013); *Wallingsford v. City of Maplewood*, 287 S.W.3d 682, 685 (Mo. 2009); *Rowe v. Hussmann Corp.*, 381 F.3d 775 (8th Cir. 2004); *Pollock v. Wetterau Food Distrib. Group*, 11 S.W.3d 754 (Mo. Ct. App. 1999).

390 MO. REV. STAT. § 213.075(1).

391 MO. REV. STAT. § 213.075(1).

392 MO. REV. STAT. § 213.075.

393 MO. REV. STAT. § 213.075(11)(2)(b).

394 MO. REV. STAT. § 213.111(1).

395 MO. REV. STAT. § 290.145.

396 MO. REV. STAT. § 290.145.

> Prevent an employee from engaging in political activities, accepting candidacy for nomination to, election to, or the holding of, political office, holding a position as a member of a political committee, soliciting or receiving funds for political purpose, acting as chairman or participating in a political convention, assuming the conduct of any political campaign, signing, or subscribing his name to any initiative, referendum, or recall petition, or any other petition circulated pursuant to law.[397]

Any violation of this law is a criminal misdemeanor and may result in imprisonment and/or a fine.[398]

Genetic Information. Missouri has a law prohibiting employers from discriminating against employees or applicants based on genetic test results or information, except when the information is directly related to the person's ability to perform their job.[399] *Genetic information* is information that is the result of a genetic test, and does not include family history or results of routine physical measurements or tests.[400] *Genetic tests* are defined as a laboratory test of human dioxyribonucleic acid (DNA) or ribonucleic acid (RNA) to identify presence of inherited alterations that cause predisposition to disease or illness.[401]

HIV/AIDS. Pursuant to a separate statute, individuals with HIV infection, Acquired Immunodeficiency Syndrome (AIDS), and AIDS-related complexes are protected under the MHRA. To be protected, the individual must *not* be currently contagious with disease or infection and: (1) a direct threat to the health and safety of other individuals; or (2) unable to perform the duties of their employment.[402]

Military Status. Missouri law provides that "No person shall discriminate against any member of the organized militia or of the Armed Forces of the United States because of his membership therein."[403]

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Columbia, Kansas City, St. Louis, and Springfield are subject to local fair employment practices ordinances.

- **Columbia.** Protected classifications include: race; color; religion; sex (including pregnancy, childbirth, or related medical conditions); national origin; ancestry; marital status; disability; sexual orientation; gender identity or expression; receipt of governmental assistance; alienage or citizenship status; status as a victim of domestic violence or sexual violence; order of protection status; familial status; and, age (40 to 60 years). The antidiscrimination protections apply to any person that employs one or more individuals within the jurisdiction of the city of Columbia and any person acting directly in the interest of an employer, exclusive of parents, spouses, and children of the employer.[404] Any individual who claims to be

[397] MO. REV. STAT. § 115.637.

[398] MO. REV. STAT. § 115.637.

[399] MO. REV. STAT. § 375.1306(1).

[400] MO. REV. STAT. § 375.1300(3).

[401] MO. REV. STAT. § 375.1300(4).

[402] MO. REV. STAT. § 191.665(1).

[403] MO. REV. STAT. § 41.730.

[404] COLUMBIA, MO., CODE OF ORDINANCES §§ 12-32, 12-34, 12-36, and 12-37 (exceptions); *see also* COLUMBIA, MO., ORDINANCE NO. 23370 and ORDINANCE NO. 23569.

aggrieved by a discriminatory practice may file a complaint with the Columbia Commission on Human Rights within 180 days of the date of the alleged discriminatory practice.[405]

- **Kansas City.** Employers that employ six or more employees within the city limits of Kansas City, Missouri must extend antidiscrimination protections on the basis of: race; color; sex (including sexual harassment); religion; national origin; ancestry; disability; sexual orientation; gender identity; age (40 or more years); and natural hair and protective hairstyles.[406] Any person claiming injury by an allegedly unlawful discriminatory practice may file a verified written complaint with the director of the Kansas City Human Relations Department within 180 days after the alleged unlawful discriminatory practice was committed.[407]
- **St. Louis.** Employers with six or more employees, exclusive of parents, spouses, or children, are subject to the following antidiscrimination protections: race; color; age (40 to 60 years); religion; sex; familial status; disability; sexual orientation; gender identity or expression; national origin or ancestry; and an individual's hairstyle, protective hair, or natural or cultural hair texture or style.[408] Additionally, covered employers must extend antidiscrimination protections on the basis of: reproductive health decisions—meaning any decision related to the use or intended use of a particular drug, device, or medical service related to reproductive health, including the use or intended use of contraception or fertility control or the planned or intended initiation or termination of a pregnancy, and pregnancy status including childbirth or a related medical condition.[409] An aggrieved person may, no later than 180 days after an alleged prohibited discriminatory practice has occurred or terminated, file a complaint with the Director of the St. Louis Civil Rights Enforcement Agency.[410]
- **Springfield.** Employers with a place of business in the city of Springfield that employ one or more persons, exclusive of parents, spouses, or children, must extend antidiscrimination protections on the basis of: age (40 to 69 years); race; creed; color; disability; religion; sex; national origin; and ancestry.[411] Any individual alleging a violation of the ordinance may file a complaint in writing with the Mayor's Commission on Human Rights and Community Relations within 60 days after the alleged discriminatory practice occurred.[412]

---

[405] COLUMBIA, MO., CODE OF ORDINANCES § 12-56.

[406] KANSAS CITY, MO., CITY CODE §§ 38-1 (definitions), 38-103 (exceptions, including religious).

[407] KANSAS CITY, MO., CITY CODE § 38-23.

[408] ST. LOUIS, MO., CODE OF ORDINANCES §§ 3.44.010, 3.44.080 (exceptions, including certain religious and educational religious organizations).

[409] ST. LOUIS, MO., CODE OF ORDINANCES §§ 15.175.010, .020 (religious institutions, corporations, associations, or societies are not required to provide reproductive health benefits of any kind. There is also a *bona fide* occupational qualification exception.).

[410] ST. LOUIS, MO., CODE OF ORDINANCES § 3.44.090; ST. LOUIS, MO., CODE OF ORDINANCES § 15.175.030.

[411] SPRINGFIELD, MO., CODE OF ORDINANCES §§ 62-32, 62-34, 62-35 (lawful practices) 62-82 (concerning the employment of a qualified person with a disability), and 62-101 *et seq.* (age discrimination).

[412] SPRINGFIELD, MO., CODE OF ORDINANCES §§ 62-37, 62-38, and 62-105 (age discrimination enforcement).

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[413] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[414]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

The Missouri Equal Pay Act prohibits gender-based compensation.[415] It forbids employers from paying female employees at wage rates less than that paid to male employees in the same establishment for the same quantity and quality of the same classification of work.[416] The statute does not prohibit a variation of rates of pay for male and female employees when made in good faith based upon a difference in seniority, length of service, ability, skill, difference in duties or services performed; a difference in the shift or time of day worked, hours of work, or restrictions or prohibitions on lifting or moving objects in excess of a specified weight; or another reasonable differentiation or factor other than sex.

An employee alleging a violation may file a civil action within six months of the alleged violation.[417]

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

---

413 29 U.S.C. § 206(d)(1).

414 42 U.S.C. § 2000e-5.

415 MO. REV. STAT. §§ 290.400 *et seq*.

416 MO. REV. STAT. § 290.410.

417 MO. REV. STAT. § 290.450.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[418]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[419]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[420] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[421] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot

[418] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[419] 29 C.F.R. § 1636.3.

[420] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[421] 29 C.F.R. § 1636.3.

perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[422]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[423]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[424]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

[422] 29 C.F.R. § 1636.4.

[423] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[424] 29 C.F.R. § 1636.3.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Protections for pregnancy, miscarriage, legal abortion, childbirth, and recovery therefrom in Missouri primarily focus on potential leave; therefore, the law is discussed in **3.9(c)(ii)**.

3.11(c)(iii) *Local Guidelines on Pregnancy Accommodation*

The city of Kansas City, Missouri requires employers to provide employes with reasonable accommodations for known limitations related to pregnancy, childbirth, or related conditions. It is unlawful for employers of six or more employees to:

- fail to make reasonable accommodations for known limitations, unless the employer can demonstrate that the accommodations would impose an undue hardship;
- require an employee to accept any accommodation other than a reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to an employee based on their need for reasonable accommodations;
- require an employee to take paid or unpaid leave when another reasonable accommodation could be provided to the employee; and
- take adverse employment action against an employee in response to their requesting or using a reasonable accommodation.

Under the law, *known limitations* are defined as any physical or mental condition related to, affected by, or arising from pregnancy, childbirth, or related medical conditions that either the employee or the employee's representative has communicated to the employer. A known limitation triggers the requirement for reasonable accommodation if it meets this definition, regardless of whether it is separately considered a disability under the law.[425]

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[426] Multiple decisions of the U.S. Supreme Court[427] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[428] Training

---

[425] KANSAS CITY, MO. CODE OF ORDINANCES §§ 38-1, 38-101, & 38-114.

[426] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[427] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

[428] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

There are no antiharassment training and education requirements mandated for private employers in Missouri.

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

The Missouri Whistleblower's Protection Act makes it unlawful for an employer to discharge a protected person because of the person's status as a protected individual. A *protected person* under the law is an employee that has reported an unlawful act of their employer to the proper authorities, or who has reported serious misconduct of the employer that violates a clear mandate of public policy, or has refused to carry out a directive issued by the employer that, if completed, would be a violation of the law. Several exceptions apply. Employers with six or more employees are covered under the law. The law also provides a private right of action for aggrieved individuals.[429]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[430] and the Railway Labor Act (RLA)[431] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by

[429] MO. REV. STAT. § 285.575.

[430] 29 U.S.C. §§ 151 to 169.

[431] 45 U.S.C. §§ 151 *et seq*.

employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Missouri enacted a right to work law in 2017. However, the measure never became effective because of a successful petition for a statewide referendum vote. As a result of the vote, which took place in August 2018, Missourians blocked the law from taking effect.[432]

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[433] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[434] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Missouri does not have a mini-WARN law requiring advance notice to employees of a plant closing.

4.1(c) *State Mass Layoff Notification Requirements*

Missouri does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 10 lists the documents that must be provided when employment ends under federal law.

---

[432] *See* MO. REV. STAT. § 290.590.

[433] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[434] 20 C.F.R. §§ 639.4, 639.6.

Table 10. Federal Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[435] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[436]

4.2(b) *State Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under state law.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: mini-COBRA, etc.	Missouri adopts and applies federal COBRA provisions to small employers of up to 20 employees. Thus, small employers should follow the notification procedures and time limits specified in the federal COBRA statute.[437] No other notice requirement located.
Unemployment Notice	**Generally.** Employers must provide each separated employee a copy of the booklet about employment security in Missouri, entitled *Filing for Unemployment Insurance Benefits in Missouri*.[438]

[435] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[436] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

[437] MO. REV. STAT. § 376.428.

[438] MO. REV. STAT. § 288.130; *see* MO. CODE REGS. ANN. tit. 8, § 10-3.070. This unemployment booklet is available at https://labor.mo.gov/sites/labor/files/pubs_forms/M-INF-288-5-AI.pdf.

Table 11. State Documents to Provide at End of Employment	
Category	**Notes**
	Multistate Workers. Whenever an individual covered by an election is separated from employment, an employer must again notify the employee as to the jurisdiction under whose unemployment compensation law services have been covered. If, at the time of termination, the individual is not located in the elected jurisdiction, the employer must notify the employee as to the procedure for filing interstate benefit claims.[439]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

References. Section 290.152 of the Missouri Revised Statutes permits all employers to provide certain information pertaining to current or former employees, pursuant to a request by a prospective employer. In responding to a request, the employer may disclose the duration and the nature and character of the employee's service, as well as state for what cause, if any, the employee was terminated, whether involuntarily or voluntarily.[440] If the employer violates the requirements, the employer may be liable for compensatory, but not punitive damages.[441] The employer is also required to send a copy of the letter sent to the prospective employer to the employee.[442]

Employers are immune from any civil liability, or for the consequences of the response, unless such response was false and made with knowledge that it was false, or with reckless disregard as to its truth or falsity.[443]

Service Letter. Section 290.140 of the Missouri Revised Statutes provides that employees have a right to receive a letter of dismissal pertaining to the individual's employment, commonly called a *service letter.*[444] Covered corporations are those that employ seven or more employees and eligible employees must have worked for at least 90 days. To be entitled to a service letter, the employee must make a request with specific reference to the statute to the superintendent, manager, or agent of the corporation, within a year of the termination of the individual's employment. The request must be made in writing by certified mail.[445]

---

[439] MO. CODE REGS. ANN. tit. 8, § 10-4.090.

[440] MO. REV. STAT. § 290.152.2.

[441] MO. REV. STAT. § 290.152.2.

[442] MO. REV. STAT. § 290.152.3.

[443] MO. REV. STAT. § 290.152.4.

[444] MO. REV. STAT. § 290.140.

[445] MO. REV. STAT. § 290.140.

The superintendent or manager of the employer is required to provide the letter to the employee within 45 days after receipt of the request. The letter must be signed by a superintendent or manager and set forth the duration, the nature, and character of the employee's employment, as well as provide the actual reason for the employee's discharge or voluntary termination.[446] A covered employer that violates the requirements is liable for compensatory damages.[447]

[446] MO. REV. STAT. § 290.140.

[447] MO. REV. STAT. § 290.140.